U.S. Department of State
FY 2001 Country Commercial Guide: European Union

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I. EXECUTIVE SUMMARY

This Country Commercial Guide (CCG) presents a comprehensive look at the European Union's commercial environment, using economic, political and market analysis. The

CCGs were established by recommendation of the Trade Promotion Coordinating Committee (TPCC), a multi-agency task force, to consolidate various reporting documents prepared for the U.S. business community. Country Commercial Guides are prepared annually at U.S. embassies through the combined efforts of several U.S. government agencies.

The United States and the European Union, with its fifteen Member States, enjoy a mature economic relationship that is characterized by massive two-way trade, in cumulative balance for over twenty years, and by an even more extensive two-way investment ($915.4 billion in 1998) that employs over 3 million Europeans and 3 million Americans. In 1999 U.S. exports to the EU-15 were $151.6 billion, while U.S. imports from the EU-15 amounted to $195.4 billion.

The EU has in 2000 a population of 376 million and a GDP of $8.5 trillion. The EU represents a market with a population that is therefore 138% that of the U.S. (population 272.8 million) and an economy 99% of its size (GDP $8.6 trillion). The EU Member States' public sector, which includes 450,000 public contractors at national and local levels, is an important part of the total EU economy, accounting for almost $950 billion in purchases in 1999 or 11% of GDP. Moreover, EU institutions (with an annual budget of $88.8 billion in 2000) remain an important economic stimulus, particularly of agricultural production and regional economic development, throughout Europe.

Europe's GDP growth in 1997-1999 (2.6%, 2.8% and 2.3%, respectively) lagged that of the U.S. (3.8%, 3.9% and 4.2%). This slower growth explains in part the current U.S. trade deficit with the EU. Forecasts for 2000 indicate an improved EU growth of 3.4% and 3.1% for 2001, with inflation remaining low (1.8% in 2000). Europe's unemployment is expected to decrease from 10.3% in 1999 to 8.5% in 2000 and an estimated 7.9% by 2001, but is likely to remain high for some time.

On January 1, 1999, the European Union adopted the euro as its new currency for the eleven member states that had satisfied the macroeconomic conditions necessary to join the European Monetary Union (EMU). Although euro banknotes and coins will not enter into circulation until 2002, the euro is already being used in electronic transactions and as a unit of account whose value has been fixed irrevocably with the participating member state currencies. The first countries to use the euro are: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. In June 2000, Greece was approved to participate in EMU starting January 1, 2001. Not yet part of the EMU are: Denmark, Sweden and the United Kingdom. Denmark is scheduled to hold a referendum on EMU participation in September 2000.

Transatlantic cooperation in 1999 yielded increased commercial benefits for U.S. business. The costs and delays involved in certifying a product as being in conformity with European technical requirements will diminish in the future because of the December 1998 U.S.-EU Mutual Recognition Agreement (MRA) on Conformity Assessment. The MRA is expected to facilitate $55 billion in two-way trade in telecommunications products, marine recreational craft, pharmaceuticals, medical equipment and other electrical/electronic items. An EU metric-only labeling requirement for U.S. exports was postponed until 2010 by the European Commission.

Historically, U.S. exporters and investors have faced relatively low barriers to doing business in the EU. Additionally, American business may benefit from several developments in the European Union begun in 1998: deregulation in several sectors, i.e., airlines, telecommunications, natural gas and postal services; the introduction of the euro; and the start of negotiations on the eventual enlargement of the EU with 12 candidate countries (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia). The movement towards a single market and single currency should facilitate increased trade, as did the creation of a Transatlantic Economic Partnership (TEP), and the implementation by the EU of its obligations under the Uruguay Round results and the basic telecommunications, financial services and Information Technology Agreements of the WTO. Particular business prospects will vary among Member States, so exporters should review CCGs from the member state posts in Europe.

The U.S. and the EU continue to discuss broader, deeper economic cooperation (within the framework of the TEP). Nonetheless, the U.S. has a number of ongoing disputes with the EU, a situation to be expected in such a massive commercial relationship as exists between the two transatlantic partners. The U.S. and the EU have engaged in extensive talks on the EU Data Privacy Directive, which are nearing conclusion after the EU Member States approved the compromise struck by the Commission and the U.S. Department of Commerce in May 2000. Negotiations are still ongoing on aircraft noise emissions, genetically modified organisms, bananas, biotechnology and a range of food, pharmaceutical, cosmetic and other products containing items the EU describes as Specified Risk Materials. A new potential area for disputes emerged as the EU challenged the U.S. Foreign Sales Corporations system in the WTO.

To enable U.S. business to better take advantage of these opportunities, the U.S. Department of Commerce launched its "Showcase Europe" (SCE) initiative in 1995 to meet both the needs of U.S. exporters as well as those of American firms already operating in Europe. Showcase Europe has been designed to help U.S. companies more effectively exploit commercial opportunities presented by the immense EU regional market, and the emerging markets of Eastern Europe, Russia and the Newly Independent States (NIS). The Showcase program is the Commercial Service's way of recognizing that Europe is and will remain for some time our largest commercial partner. SCE benefits all U.S. firms, but especially those in eight sectors: aerospace; automotive; energy; environment; franchising; information and communications technologies; medical; and travel and tourism. For more information please consult the Showcase Europe website on http://www.sce.doc.gov

American firms doing business in Europe should also be aware of the Transatlantic Business Dialogue (TABD). The TABD is a forum for U.S. and European businesses to provide voluntary input to the U.S. government and the European Commission on impediments to transatlantic business. The TABD also includes the Transatlantic Small Business Initiative (TASBI), which aims to increase joint ventures and strategic alliances/partnerships between U.S. and EU small and medium-size businesses through partnering events and linkages of information systems. In the U.S., please contact Lisa Schroeter for more information on TABD initiatives: TABD/United Technologies Corporation, Washington DC, tel.: (202) 336-7485, fax: (202) 336-7447 or website: http://www.tabd.com. Similar transatlantic dialogues between governments and labor, environmental and consumer constituencies are also held.

CCGs are available for U.S. exporters from the National Trade Data Bank's CD-ROM or via the Internet. Please contact Stat-USA at 1-800-Stat-USA (782-8872) for more information. CCGs can be accessed via the World Wide Web at http://www.stat-usa.gov; http://www.state.gov. and http://www.mac.doc.gov. They can also be ordered in hard copy or on diskette from the National Technical Information Service (NTIS) at 1-800-553-NTIS (-6847). U.S. exporters seeking general export information/assistance and country-specific commercial information should contact the U.S. Department of Commerce, Trade Information Center by phone at 1-800-USA-TRAD(E) (872-8723) or by fax at (202) 482-4473.

II. ECONOMIC TRENDS AND OUTLOOK

THE ECONOMY OF THE EUROPEAN UNION

A. A Snap-Shot

The European Union of 15 members has a population of about 376 million, concentrated largely in Germany (82 million, or 22%), Italy, the United Kingdom, and France (each with approximately 58 million people). While the EU's population is about 1.4 times that of the United States, it is squeezed into an area about one-third its size. Consequently, population densities are much higher: 117 people per square kilometer in the EU, versus 29 in the U.S. Densities range from more than 300 people per square kilometer in the Netherlands and Belgium, to about 15 in Finland.

The overall size of the EU economy in 1999 was approximately $8.5 trillion Gross Domestic Product (GDP). Private consumption accounted for 58% of the EU's GDP, while gross fixed capital formation contributed 20% and government consumption added an additional 20%. It should be noted that total current expenditures by the government sector in the EU in 1999 were 44.2% of GDP while current receipts were 45.5%. In the external sector, the average ratio of exports of goods and services to GDP for the EU-15 in 1999 was 31.9%, while imports of goods and services was also 31.9%. Most of this trade, however, was among Member States, as exports of goods to the rest of the world were 9.5% and imports 9.8% of GDP.

Germany has by far the largest economy in the EU, accounting for 23% of the EU's 1999 GDP, followed by France (16%), Italy (15%), and the United Kingdom (17%). Per capita income (est. 1999) for the EU as a whole was about $22,615, ranging from around 180% of the average in Luxembourg to Portugal (75%) and Greece (67%).
Like the U.S., the EU economy is heavily weighted toward the service sector, which in 1996 provided about 67% of the value-added in the economy. Industry (including construction) contributed another 31%, leaving agriculture at about 2%. As with most features of the EU, there is considerable variation between Member States. For example, in 1999 in Germany, industry is almost 36% of value-added, while in Greece agriculture contributes over 14%.

B. Recent Economic Trends

Despite a slowdown in late 1998 and early 1999 due to the Asian economic crisis, the EU has enjoyed a period of relatively solid economic growth since 1997, due to a strong pick-up in the world economy and falling interest rates, combined with higher productivity and corporate profitability. This positive economic climate allowed the EU to launch successfully its single currency, the Euro, on January 1, 1999. This moderate economic expansion (with annual real GDP increases of 2.5% in 97, 2.7% in 98, and 2.3% in 99) coupled with disciplined government fiscal policies allowed the EU member states to reduce their inflation rates and government deficit and debt ratios. The EU economy strongly accelerated in the second half of 1999 and the EU Commission in its Spring (April 2000) forecast is predicting a growth at 3.4% for 2000 and 3.1% for 2001.
Due to high labor costs (especially non-wage costs) and structural rigidities, high levels of unemployment have continued to persist. According to the EU Commission the EU's unemployment rate averaged 10.2% in 1991-96, climbing to 10.6% in 1997 before starting to decline to 9.9% in 1998 and 9.2% in 1999. Realizing the connection between protracted high unemployment and the need for structural economic reform, the EU has begun to address issues relating to economic integration and efficiency in relation to the functioning of the Single Market, in particular the EU's product and capital markets.

Unemployment levels will continue to vary considerably among Member countries ranging in 1999 from a low of from 2.8% in Luxembourg to 15.9% in Spain. Annual inflation is forecast to remain low in 2000 at around 1.8%, below the European Central Bank's (ECB) reference rate of 2%.

The main features of the EU's most recent (Spring 2000) Economic Forecast are:

	1997	1998	1999	2000E	2001E
GDP growth	2.5	2.7	2.3	3.4	3.1

Unemployment (a)	10.6	9.9	9.2	8.5	7.9
Inflation (b)	1.7	1.3	1.3	1.8	1.7
Govt. Deficit (%GDP)	–2.4	-1.5	-0.6	-0.4	-0.3
Govt. Debt (%GDP)	71.0	69.0	67.6	65.1	62.6
Current Account Balance (%GDP)	1.4	0.9	0.2	0.1	0.3

*Real pct change p.a. unless otherwise stated.

(a) As a percentage of the civilian labor force;
(b) Harmonized index of consumer prices, nominal change.

C. Recent Economic Policy Developments

Economic and Monetary Union

The most important economic policy initiative in the European Union in the 1990s has been the creation of the Economic and Monetary Union (EMU) among the Member States and the launch of a single currency, the euro. This is a centerpiece of the Maastricht Treaty, designed to complete the Single Market, which entered into force in November 1993.

Under the Treaty, a transition period to EMU –“Stage II” – began on January 1, 1994. The Treaty calls on the Member States to strive to meet fairly stringent “convergence criteria” in order to qualify for EMU. These criteria include: a budget deficit under three percent of Gross Domestic Product; national debt below or approaching the reference value of 60 percent of GDP; an inflation rate that does not exceed 1.5 percentage points of the average of the three Member States within the lowest inflation rates; long-term interest rates no more than two percentage points above the average of the three Member States with the lowest interest rates; and an exchange rate that has stayed within the “normal” fluctuation bands in the Exchange Rate Mechanism (ERM) for the most recent two years.

In May 1998, the European Council (Member State Heads of Government) approved 11 qualifying states for membership in the new single currency (euro) area. The UK and Denmark opted not to participate immediately, while Greece and Sweden failed to meet the convergence criteria. In June 2000 the European Council, having been satisfied that Greece now met the criteria approved it as the 12th member as of January 1, 2001. The Council chose Dutch Central Banker Wim Duisenberg to head the Frankfurt-based European Central Bank (ECB) and appointed five other members of the ECB board.

Implementation of the third stage of EMU – full monetary union with a single currency managed by the ECB – began on January 1, 1999, euro denominated coins and notes will not be introduced into circulation until January 1, 2002. Until then, the 11 Euro participants are in a three year transition period during which individuals and companies can make electronic funds and check transactions in euros and firms may dual-price products and services in euros as well as local currency.

Expectations of lower business transactions costs, reduced risk of political interference in interest and exchange rate management and "seigniorage" effects, as the euro becomes an accepted international settlements currency, have boosted business confidence in the EU. However, this has been partially offset by an approximately 20% decline in the euro against the dollar since its launch. This has been due to the continued relatively stronger growth of the U.S. economy. While the euro's depreciation has led to strong export led growth rates in the EU, it has also led to a rise in inflation due to higher import prices especially for energy products. The euro area members have also committed themselves to move their budgets into balance or slight surplus by 2002, realizing that they must have sufficient fiscal policy tools to stimulate growth during the next business cycle downturn.

III POLITICAL ENVIRONMENT

Nature of Bilateral Relationship with the United States

The United States and the European Union enjoy full diplomatic relations distinct from those between the U.S. and each of the EU Member States. The U.S. Mission to the European Union in Brussels is accredited to both the Commission and the Council of the European Union. The Commission's representative in Washington is the only diplomatic envoy from an organization, the European Community (as opposed to a nation state) who is accorded full ambassadorial rank by the United States - reflecting the European Community's unique status as a supranational entity.

The U.S. has had diplomatic relations with the EU's predecessor organizations since the founding of the Coal and Steel Community shortly after World War II. However, the "modern" framework for relations between the United States and European Union was established in the 1990 "Declaration on U.S.-European Community Relations." It called for biannual meetings between the President of the United States, the President of the European Council (which rotates at six-month intervals among Member States), and the President of the Commission. It also called for biannual consultations between the EU foreign ministers, with Commission representation, and the U.S. Secretary of State. A series of lower-level meetings is also described in the Declaration.

The December 3, 1995 U.S.-EU Summit adopted the New Transatlantic Agenda, which sets forth an ambitious agenda for transatlantic cooperation on a wide range of issues of common concern.

It emphasizes joint action the United States and EU will take to address key global challenges in four areas:

1) Promoting peace, development and democracy globally, including cooperative efforts in the Balkans and the Middle East.

2) Responding to global challenges. This includes efforts to combat international crime, trafficking in drugs and nuclear materials, and terrorism.

3) Expanding trade by building a Transatlantic Marketplace characterized by lower barriers and greater integration between our two economies, including an Information Technology Agreement; Mutual Recognition Agreements on testing and certification of products; and a joint study on ways to reduce further or eliminate tariff and non-tariff barriers.

4) Building transatlantic bridges by expanding cultural, educational, and scientific exchanges.

Beginning in May 1998, the United States and the EU have launched additional initiatives to further the goals of the New Transatlantic Agenda. The first was the Transatlantic Economic Partnership (TEP), designed to intensify bilateral and multilateral trade and investment facilitation, liberalization, and cooperation; to create additional positive momentum in the United States-EU trade relationship; and to broaden the transatlantic economic dialogue to include labor, environmental, and consumer organizations. The existing Transatlantic Business Dialogue (TABD) has been expanded within the addition of the Transatlantic Legislators' Dialogue (TLD), Transatlantic Consumer Dialogue (TACD), Transatlantic Environmental Dialogue (TAED), the Transatlantic Political Dialogue (TPD) and the Transatlantic Labor Dialogue (TALD).

Major Political Issues Affecting Business Climate

The general political issues which have the greatest effect on the business climate within the European Union are the launching of the common currency (the euro), institutional reform, European Security and Defense Policy (ESDP), and enlargement.

The 1992 Treaty on European Union (The "Maastricht Treaty") and the 1997 Treaty of Amsterdam provided for significant institutional changes in the EU, establishing three "pillars" of EU policy – Economic Affairs, Common Security and Foreign Policy, and Justice and Home Affairs (police and judicial cooperation). The treaties also provided greater authority to the European Parliament, granting it extensive "co-decision" authority with the Council and authority to approve the appointment of the President of

the Commission and of the Commissioners as a body. In addition, the European Parliament has extended its own power through the use of public hearings on matters of common concern and by the use of its power over the budget. Under the Treaty of Amsterdam, which entered into force May 1, 1999, the Commission has increased its authority over Justice and Home Affairs
and established a "forward planning unit" to coordinate issues of Common Security and Foreign Policy (CFSP), though ultimate authority in this area remains with the Member States. Most significantly, the office of "High Representative for CFSP" has been established, and former NATO Secretary General Javier Solana assumed this position in October 1999. In addition, EU Member States agreed in 1999 to establish an EU rapid reaction force, with all the necessary attendant institutional bodies. The latter development has also given new impetus to the EU's emerging defense industries policies.

The EU in 1998 invited ten Central and Eastern European countries and Cyprus to become candidates for membership, began a formal legal screening process with them, and subsequently started accession negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia. In 1999, Malta reactivated its membership application, and the EU named Turkey the 13th "candidate country." The EU launched negotiations in February 2000 with Bulgaria, Latvia, Lithuania, Malta, Romania, and Slovakia. EU officials generally predict that the first of these 12 negotiating candidate countries will join the organization around 2005. Under the Treaty of Amsterdam, the EU must also complete internal institutional reforms before admitting more than five new members. To that end, the EU started an Intergovernmental Conference on Treaty reforms that should be completed in December 2000 and should prepare the EU for future enlargement. The EU agreed in 1999 on financial reforms to the Common Agricultural Policy (CAP), structural and development funds, and the budget.

ESDP, the enlargement of the EU, its institutional reforms, and the effects of the euro on fiscal and monetary policies will tend to draw the Member States into a closer form of union. Most observers agree, however, that -- despite the changes occurring in the EU's structure -- for the foreseeable future the EU will not become a single state but will remain an association of states, with sovereignty divided among the EU institutions in Brussels and the Member State governments. The divided competencies will leave national governments in a position to exercise strong influence over economic affairs in Europe.

Brief Synopsis of Political System, Schedule for Elections, and Orientation of Major Political Parties

The main political institutions of the European Union are the Council, the Commission, and the European Parliament. The Council is a policymaking and legislative body that consists of a representative from each EU Member State at the Ministerial level who can make binding commitments for his government; The Council has multiple formations and actual participation varies according to the subject at hand. For example, Foreign Ministers sit on the "General Affairs" formation of the Council", transport ministers on the "Transport" formation , and finance ministers on the "Economic and Financial Affairs" formation (or "ECOFIN") of the Council. The President of the Commission and the EU heads of state/government meet at least every six months as the "European Council", the supreme policy-making body in the European Union. The Presidency of the Council rotates among the Member States and changes every six months. The Member State holding the presidency not only presides at Council meetings, but also has an important role in setting priorities for the entire EU and attempting to moderate differences.

The Commission is more of an executive body, responsible for implementing EU Treaties and policies and proposing legislation. It consists of 20 Commissioners, including the Commission President. The Commission President is nominated by the governments of the Member States and approved by Parliament. Each Member State, according to its size, also nominates either one or two Commissioners. The Commission President and the Commission as a whole must then also be approved by Parliament, and new commissioners serve five years. The Commission headed by President Jacques Santer, which took office in 1995, resigned in March 1999 following a parliamentary investigation of alleged fraud and mismanagement by some Commission officials. A new Commission, led by Romano Prodi of Italy, took office in September 1999. The term "Commission" is also used for the approximately 20,000 permanent employees who carry out EU policies; these officials are divided into directorates general ("DGs"), according to their areas of responsibility. Almost half these employees work in language services as translators or interpreters.

The 626-member European Parliament (EP) is the only directly-elected EU institution. Union-wide elections are held at five-year intervals, most recently in June 1999. EP members belong to national parties, but once in the Parliament they affiliate with special EP political groups linked to Europe-wide parties; the center-right Group of the European People's Party (“EPP Group”) and the Group of the Party of European Socialists (“Socialist Group”) are the largest. Most EP committee meetings are held in Brussels, but most plenaries take place in Strasbourg, one week per month.

In general, EU legislation is proposed by the Commission and approved by the Council and Parliament. In the "co-decision" procedure, which applies to most legislation in Economic Affairs - but not to traditional trade issues - and some areas of Justice and Home Affairs, the EP may meet directly with Council representatives to negotiate changes to disputed legislation, and then may or may not veto it. The total amount of EU budget revenues is determined by the Member States, but the EP has significant powers in allocating the half of the budget not concerned with agriculture.

IV MARKETING OF U.S. PRODUCTS AND SERVICES

Use of Agents/Distributors, Finding a Partner

Finding agents and distributors for U.S. Companies is a major part of the responsibilities of Commercial Service posts in the Member States of the European Union, and is, moreover, a logical consequence of the distinct character of each national market. However, the laws governing the relationships between agents/distributors and manufacturers/suppliers are harmonized at EU level.

The EU has issued a directive harmonizing national laws affecting commercial agents. In essence, the directive establishes the rights and obligations of the principal and its agents, the agent's remuneration, and the conclusion and termination of an agency contract. When implementing the directive, Member States may apply one or more of the following options as compensation in case of termination of a contract: indemnity (based on past and anticipated performance) and damages (based on immediate costs at the time of termination).

EU law as such does not regulate distribution contracts but, because they are subject to competition policy, private companies in cases of restrictive and concerted practices may invoke Article 81 of the Treaty of Amsterdam. Agreements do not fall within the scope of Article 82 if the effect of the agreement on competition is insignificant, that is, if the products covered by the agreement represent no more than 5% of the European market in case of horizontal agreements and 10% in case of vertical agreements.

The Commission also allows for several specific types of distribution agreements to benefit from "block exemptions": exclusive distribution agreements, selective distribution agreements (e.g. auto distributors), exclusive purchasing agreements, patent licensing agreements, franchising agreements, know-how licensing agreements, and others.

Franchising

The Commission regulation on franchise agreements, in force since February 1989, covers agreements between the franchiser and the franchisee, for the retailing of goods or the provision of services to end users. A franchise involves a package of industrial or intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyrights, know-how or patents.

The provisions of the regulation aim to protect the identity and reputation of the franchise network by placing certain obligations on the parties involved, some of which are listed below:

- the franchisee is required to sell products which are manufactured by the franchiser or third parties designated by it;

- the franchisee is prohibited from engaging, directly or indirectly, in any similar business in a territory where it would compete with a member of the franchised network;

- the franchisee is required to sell, or use exclusively goods matching minimum objective quality specifications defined by the franchiser;

- the franchisee is prohibited from assigning the rights and obligations under the agreement without the consent of the franchiser; the franchiser is prohibited from exploiting himself the franchise in the franchisee's territory; and

- the franchisee is required to comply with the franchiser's standards for maintenance of the operation and allow the franchiser to carry out checks on the inventory

Direct Marketing

As American direct marketers become increasingly interested in the European Union's large and rich market, they should be aware of the EU's laws on distance selling and data protection.

The EU's Distance Selling proposal improves consumer information and affords better protection by establishing a "minimum basis" of general rules. Under the proposal:

- consumers must be clearly informed of the identity and address of the mail-order firm, nature of the product/service, price, quantity and transport charges, acceptable methods of payment, means of delivery, validity period of offer;

- if the customer does not receive the above information in writing (or in some other durable medium) at the time of solicitation, it must be confirmed in writing at a later stage; in the case of goods, this is no later than the time of delivery;

- consumers should have the right to return the merchandise within seven days of ordering it; if the merchandise is discovered to be faulty after seven days, consumers retain the right to compensation;

- merchandise should be delivered only when ordered;

- when merchandise has been ordered, the maximum delivery period is 30 days;

- the consumer is to indicate within 7 days an interest in further solicitations by mail (opting-in or out);

- no advance payment may be required;

- in certain circumstances, the supply of substitute goods is permissible;

- transactional language should be determined by the Member State;

the customer's prior consent is required for sales solicitations by fax or by automated calling machines;

- Member States shall ensure that effective means of redress exist in the interest of the consumer.

In July 1995, the European Parliament and the Council adopted the Directive on the Protection of Personal Data. The Directive outlines a permanent regulatory framework to permit Member States to transmit personal data across borders. There are two main objectives in the Directive. First, the Directive aims to guarantee free movement of personal data within the EU. Second, the Directive aims to ensure the adequate level of protection of privacy of individuals in each Member State.

For mail-order companies involved in direct marketing, this directive means that:

- the consent of the "data subject" (customer) to the transmission to the customer's personal data is required;

- a contractual/semi-contractual relationship of trust between the data controller and the data subject should exist;

- the data should come from sources generally accessible to the public;

- the balanced interests of both parties should be respected; and

- third countries receiving or transmitting the customers personal data should have an adequate level of protection (see also chapter VI).

Advertising and Trade Promotion

Since laws against misleading advertisements differ widely between the Member States, the Commission adopted a directive which has been in force since October 1986, to establish minimum and objective criteria. The directive was amended in October 1997 to include comparative advertising. Misleading advertising is defined as any "advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behavior or which for those reasons, injures or is likely to injure a competitor." Member States can authorize even more extensive protection.

Comparative advertising, subject to certain conditions is defined as "advertising which explicitly or by implication identifies a competitor or goods or services by a competitor".

Following the adoption of the 1999 Council directive on the sale of consumer goods and associated guarantees, the product specifications as laid down in advertising are now considered as legally binding on the offerer.

The advertising of medicinal products for human use is also regulated by a Council Directive. Generally speaking, the advertising of medicinal products is forbidden if the authorization to market them has not been granted and if it concerns a prescription drug. Mentioning therapeutic indications, where self-medication is not suitable, is not permitted nor is the distribution of free samples to the general public. The text of the advertisement should be compatible with the characteristics listed on the product label, and should encourage rational use of the product. The advertising of medicinal products destined for professionals should contain essential characteristics of the product as well as its classification. Inducements to prescribe or supply a particular medicinal product are prohibited and the supply of free samples is restricted.

In July 1998 the Council adopted legislation banning advertising and sponsoring of tobacco products which entered immediately into force. Member States have 3 years for transposition into national law and can defer implementation for one additional year "in respect of the press and two years in respect of sponsorship". The legislation ends all press, radio, cinema, billboard, and poster advertising of tobacco and tobacco products. Publicity is only allowed inside tobacco shops. Other goods produced by tobacco groups, such as clothes carrying cigarette-brand logos, are also banned if they promote a tobacco product. Sponsorship itself is not outlawed, but tobacco brand logos will definitely be banned after October 1, 2006.

More recent legislation on advertising includes a Directive of March 2000 on the labeling, presentation and advertising of foodstuffs. Advertising methods must not "mislead the purchaser to a material degree", or "attribute to any foodstuff the property of preventing, treating or curing a human disease".

Sales Service/Customer Support

Conscious of the discrepancies among Member States in product labeling, language use, legal guarantee, and liability, the redress of which inevitably frustrates consumers in cross-border shopping, the EU institutions have launched a number of initiatives aimed at harmonizing national legislation and manufacturers. Suppliers within and outside the EU should be aware of existing and upcoming legislation affecting sales, service, and customer support.

- product liability (adopted):

  The producer is liable for damage caused by a defect in his product. The victim must prove the existence of the defect and a causal link between defect and injury (bodily as well as material). A reduction of liability of the manufacturer is granted in cases of negligence on the part of the victim. A "development risk" can also free the manufacturer from liability. The statute of limitations is ten years.

- product safety (proposal):

The current directive on General Product Safety is in the process of being revised. Changes include an obligation on the producer and distributor to notify the Commission in case of a problem with the product, provisions for recall, the creation of a European Product Safety Network, and a ban on exports of products which are not deemed safe in the EU to third countries.

- labeling legislation (adopted), language use (communication):

A number of nutrition, pricing and information labeling rules have been adopted not only to facilitate the free movement of goods, but also to ensure better information and protection for the consumer. The use of language on labels has been the subject of a Commission communication, which encourages multilingual information, while preserving the freedom of Member States to require the use of language of the country of consumption.

- legal warranties and after-sales service (adopted):

In July 1999, the Council adopted a directive on the sale of consumer goods and associated guarantees, which foresees
a warranty period of two years starting with the delivery of the good. The remedies available to consumers in case of non-compliance are:

  - repair of the goods
  - replacement of the goods
  - a price reduction

- rescission of the sales contract.

Other issues pertaining to consumers' right and protection, such as the New Approach directives, CE marking, quality control and data protection are dealt with in other sections of this CCG.

Selling to the Government

The EU public procurement market, that is the EU institutions as well as Member States and local governments, representing circa $ 950billion in 2000, is regulated by a number of directives: public works, supplies, services and utilities. The Directives cover contracts above a certain value threshold in all public sectors except utilities, the so-called excluded sector, which is regulated by a separate directive applicable to private as well as public undertakings.

Large EU tenders for public works/supplies are open to American companies and will remain so under the terms of the Government Procurement Code. However, some areas of the utilities sector (water, transport, and telecommunications) are a closed market for U.S.-based companies because of articles in EU law permitting a local content requirement of 50%. Moreover, in these utilities sectors preference must be given to an EU bid over a non-EU bid if the bids are equivalent and the price difference is less than 3%.

The USG has achieved a number of successes in negotiations with the EU, including the Government Procurement Agreement and the Memorandum of Understanding, obtaining equal access for American companies for all central and subcentral government procurement in some utilities sectors, including the heavy electrical market sector. Telecommunications, among other utility sectors, however, as stated elsewhere in this report, is still a contentious issue, both in the bilateral and multilateral arenas. As the telecom market liberalization progresses, the limitations under EU public procurement legislation are no longer applicable.

Tenders financed with EU grants or loans are also governed by EU public procurement law, with the exception of procurements using the PHARE (Central and Eastern European (CEE) countries) and TACIS (NIS) funds. In the latter cases, participating companies have to be based within the EU or the CEE/NIS countries and the goods supplied must have had their last substantial phase of manufacturing within the EU. (NOTE: detailed project financing under VIII).

EU public procurement announcements are available on CD rom, which can be ordered from EU official sales agents worldwide. Alternatively, the EU's website http://europa.eu.int/comm/opoce/en/general/b7.htm offers access to EU public procurement announcements free of charge. The Commercial Service at the U.S. Mission to the EU (CS/USEU) assists U.S. firms in identifying and pursuing procurement opportunities, by identifying public procurement offers open to U.S. firms. Because of the tremendous number of tender notices, they are chosen according to sector, with the following key sectors given priority: aerospace, environmental technologies, information technologies, with an emphasis on telecommunications, and energy, including power generation and transmission, oil and gas, and conservation.

Procurement rules are in the process of being reworked and simplified. Amendments include the clarification of existing Community Directives by merging the Supplies, Services and Works Directives. The second aim of the reform is to adapt procurement rules to modern administrative needs. Rules would be softened for complex contracts, where a dialogue between contracting authorities and tenderers is envisaged to determine the contract conditions (while maintaining the principle of transparency and equal treatment). In addition, contracting authorities would be able to specify their requirements in terms of performance and not only in terms of standards, which would made it easier for U.S. firms to bid on EU tenders. Lastly, the new proposal foresees the exclusion of the telecommunications sector from the Utilities directive and provides for the exclusion of sectors such as water or electricity, once liberalization is achieved in these areas. U.S. firms will be able to bid in these sectors once they are excluded from the Utilities Directive.

Protecting Your Product from IPR Infringement

The rights granted under U.S. patent, trademark, or copyright law can only be enforced in the United States and its territories and possessions. The EU, for its part, has taken a number of initiatives to provide intellectual property protection, but not all measures have been implemented. In cases of non-implementation of EU rules, national laws still prevail. In addition to attempting to harmonize EU copyright protection, the Commission is urging the Member States to ratify international treaties pertaining to intellectual property (the Rome, the Bern and the Universal Copyright conventions).
Intellectual property rights are also covered in chapter VI (Trade Regulation and Standards). Some commercial aspects of intellectual property are mentioned here.

- Patents: A European Community Patent, valid throughout the EU, does not yet exist, although the Commission proposed a regulation for one in July 2000. In the meantime, the patent applicant may choose between a national and a multiple-country patent. In the latter case, a single application to the European Patent Office in Munich (European Patent Office, Erhardstrasse 27, D-80331 Muenchen, Germany. Mail address: D-80298 Muenchen. Tel: 49-89-23990, fax: 49-89-23994465) is required for obtaining patents valid in the European Union member states as well as Cyprus, Liechtenstein, Monaco, and Switzerland.

- Trademarks: EU trademark legislation is in force, and the EU Trademark Office is operational in Alicante, Spain (Av. de Aguilera 20, 03080 Alicante Tel: 346/513-9100, Fax: 346/513-9173)

- Copyright (in force since July 1, 1995): copyright protection is guaranteed for 70 years after the death of the author; for ancillary rights: 50 years.

V LEADING SECTORS FOR U.S. EXPORTS AND INVESTMENT

Best Prospects for Non-Agricultural Goods and Services

U.S. business readers seeking detailed best export prospect information should consult Country Commercial Guides for the EU Member State markets in which they are interested. This chapter discusses leading sectors for U.S. exports from the perspective of the entire Single Market of the European Union.

The overall market of the European Union is a differentiated one, with each Member State market having supply, distribution, demand, cultural and legal characteristics that merit individual attention. Thus, while a pan-European business strategy, as outlined in Showcase Europe, is a must, tactics for market entry or expansion should be adjusted for each country. Readers should, therefore, consult the Country Commercial Guides produced by the U.S. embassies in the fifteen Member States of the EU for information about export "Best Prospects", the investment climate, and other economic, political and commercial information.

Overall, American companies generally find their best prospects in the EU at the upper-end of the technology scale. U.S. goods are well-regarded and demand is driven much more by quality and performance than by price. The EU offers particularly good opportunities for American suppliers of goods and services in eight Showcase Europe strategic sectors (listed alphabetically): aerospace, automotive, energy, environmental, franchising, information & communications technologies, medical & pharmaceutical, and travel & tourism.

E-commerce

Large increases in Internet take-up are driving up prospects for E-commerce in the EU. Estimates suggest that the on-line population of the region will match that of the United States by 2003. Growth in the mobile access sector will be particularly marked, driven first by upgrades in second generation networks through GPRS and EDGE technologies, and then by the introduction of third generation broadband wireless. Europeans will also be spending more time on line as telecommunications costs decrease. The 1998 telecoms liberalization package did much to tackle telecommunication costs but Internet use has been affected by lack of competition in local area networks. While the situation varies across member states, generally incumbent telecoms operators have continued to dominate the provision of voice telephony and the development of higher bandwidth services. The EU is moving to increase competition in this area with the European Commission adopting a proposal on 12 July 2000for a Regulation to open up competition in the local loop. As the infrastructure moves from narrow to broadband the potential for innovative e-commerce applications will grow. The EU has sought to consolidate this by adopting a legislative framework geared to encouraging investment in information society applications including e-commerce.

Aerospace is the next largest U.S. export sector and the European Union is a big importer of U.S. goods. In 1998 the EU bought $16 billion worth of U.S. aircraft, spacecraft and parts, which accounted for 10.7% of all U.S. exports to the EU. According to EU figures, in 1994, the U.S. held a 51.8% share (approximately $9.5 billion) of the EU import market for aerospace products, broadly defined. However impressive that market share might seem, it must be pointed out that this reflects a decline of 76.6% since 1989.

Tourism

The tourism industry is an essential growth sector within the economy - more people are spending more time and money on holidays. In 1998 the EU maintained its leading position in world tourism with 40% of all tourists having the EU as their final destination. The tourism infrastructure and service industries offer excellent prospects to competitive US firms. In 1998 the EU’s tourist market share amounted to 42% in terms of receipts. The overall growth in the EU (2%) masked differences between countries: whereas Portugal (8.8%) and Spain (7.3%) registered large increases in tourism activity, the United Kingdom and Denmark showed a decrease of 6.5% and 3.3% respectively. The EU sees the tourism sector as a major generator of jobs in particular in less developed and peripheral regions. It is likely that increased amounts of EU grants to promote regional, economic and social development in the Union will be targeted towards tourism infrastructure projects.

Environment

Europe is the US's largest export market for environmental technologies, with expected growth to $158 billion by 2005. US exports to Europe totaled $6.7 billion in 1998. The primary market driver for environmental technologies in Europe is the EU's aggressive environmental policies. While several European countries are well advanced in environmental technology, others, especially the Mediterranean EU members, Spain, Greece and Portugal, still face severe environmental problems.

Energy

Liberalization of the electricity and gas markets in Europe offers potential opportunities for US businesses. In 1999 the Electricity Market in Europe began to be liberalized as a result of the entry into force of the electricity directive. Commission officials claim that power generation for 63% of total electricity consumption in Europe (kilowatts per hour) have been liberalized. Liberalization of the gas market should start to be implemented by August 2000.

The Directives give Member States a wide degree of choice as to the manner in which they liberalize their markets. As a result, there are huge differences in the speed of energy electricity market liberalization. Germany is Europe's largest and most rapidly liberalizing electricity market. France liberalized its market only as of February 2000. Significant market opportunities for energy services are also being created as result of the European liberalization of energy markets.

Medical Devices: This sector is expected to experience strong growth due to the aging of the population, technological innovation, EU regulatory harmonization, and an increased sense of health awareness within Europe. The US is the world leader in this sector and is likely to maintain its strong competitive advantage over the EU market, particularly with higher-end product areas. The EU is the US's largest regional export market accounting for 46% of US medical device exports in 1998. The EU medical device market is 39 billion Euro accounting for 24.5% of the world market in 2000.

Best Prospects for Agricultural Products

With 376 million consumers, the EU is one of the world's largest importers of agricultural products, accounting for roughly 20 percent of total world imports. In 1999 the EU was the third largest market for U.S. agricultural exports at $6.4 billion. The value of exports has fallen steadily since 1996, mostly because of plunging commodity prices. Consistent with the global trend, the overall market for high-value consumer-oriented food products is the most promising growth area, with U.S. exports of these products to the EU reaching $2.2 billion in 1999. There are, however, a number of agricultural product areas (see chapter VI) where U.S. exporters may face problems in entering the EU.

Global branding and further integration of European markets is producing a more homogeneous food and drink market in Europe, but important national differences in consumption remain. Nevertheless, certain common trends are evident throughout the EU -- demand for greater convenience, more openness to non-traditional foods, and a growing interest in health foods, organics and other niche markets. For a thorough analysis of what commodities and products offer the best opportunities, access the website of USDA's Foreign Agricultural Service, www.fas.usda.gov, and consult the attaché reports for individual member states.

Significant Investment Opportunities

In the public sector, there are sizeable opportunities for U.S. firms to participate in partnerships, concessions, and/or investments in major infrastructural projects in the EU in the transport (including ports and airports), general infrastructure, environmental, energy, IT/telecom, tourism and public health sectors where the projects are partially funded by the Commission through its Trans European Networks program and its Structural and Cohesion Funds, and partially financed by the European Investment Bank. These projects may have follow-on public procurement opportunities that may be open to U.S.-based bidders under certain conditions, and are always open to U.S. subsidiaries in the EU. American companies with European legal status and European content may be able to participate successfully in development projects in Central and Eastern Europe or the Newly Independent States which are funded by the EU Phare or Tacis programs.

There are also sizeable procurement opportunities in EU countries funded by the EU Structural and Cohesion funds on environment, energy, telecommunications, tourism, healthcare and infrastructure projects, specially in the Mediterranean countries. American companies with European legal status and some European content may be able to participate successfully in development projects funded also by grants and loans of the European Investment Fund, the European Investment Bank and the Trans European Networks.

The Government of the United States acknowledges the contribution that outward foreign direct investment can make to the U.S. economy. U.S. foreign direct investment is increasingly viewed as a complement or even a necessary component of trade. Nearly sixty percent of total U.S. exports originate with American firms with investments abroad. Recognizing the benefits that U.S. outward investment brings to the U.S. economy, the Government of the United States undertakes initiatives, such as Overseas Private Investment Corporation (OPIC) programs, bilateral investment treaty negotiations and business facilitation programs, that support U.S. investors.

VI TRADE REGULATIONS AND STANDARDS

TRADE BARRIERS

(See also the National Trade Estimate Report on Foreign Trade Barriers, published by USTR and available through Website: http://www.ustr.gov)

Import and Distribution of Bananas: Since the late 1980's, Latin American countries and the United States have urged the EU to implement its internal market arrangements for bananas in a non-discriminatory manner. A group of Latin American countries twice brought GATT dispute settlement proceedings against EU banana measures, and both times GATT panels found that the EU's banana rules were GATT-inconsistent (1993, 1994). However, the EU chose not to implement those GATT panel findings, and proceeded to extend and compound unfair and discriminatory trade barriers. In 1993, the EU adopted a new EU-wide banana regime that took almost half of U.S. companies' business away and gave it to competing French, British, Irish, German and other European firms. In response, the United States and four Latin American countries initiated WTO dispute settlement proceedings to challenge the EU's discriminatory banana regime. A WTO panel and, subsequently, the WTO appellate body agreed that the EU's banana regime was inconsistent with the EU's obligations under the GATT and GATS. The EU agreed to implement the WTO reports' recommendations and rulings within the "reasonable period of time" provided in WTO rules, which was determined in arbitration to end on January 1, 1999. In January 1999, however, the EU implemented a modified regime that perpetuated the WTO violations identified by the panel and the Appellate Body. As a result, the United States sought WTO authorization to retaliate with respect to certain products from the EU, the value of which was set through arbitration on April 6, 1999 at $191.4 million per year. On April 19, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent ad valorem duties on a list of EU products with an annual trade value of $191.4 million. Provisions of the Trade Development Act of 2000 require revision of the list of products subject to increased duties every 180 days unless compliance is imminent or the US complainant agrees with USTR not to amend the list. Discussions with the EU to resolve this matter are continuing.

Requirements for Agricultural Biotechnology Products: Biotechnology remains one of the thorniest issues in agricultural trade. U.S. corn exports to Europe have ceased because the EU has failed to approve many new varieities of genetically-modified corn. A de facto moratorium on new product approvals is expected to continue at least until the EU completes revision of its basic regulatory legislation, Directive 90/220, sometime late this year. The EU requires special labeling of foods containing GM ingredients, but has not defined a testing method, placing a significant burden on exporters.

Labeling Requirements for Biotechnology Products:
In the United States, production processes do not have to be labeled. Products of modern biotechnology only require labeling if they are significantly transformed and differ in nutritional or functional characteristics. In the EU, all products containing or derived from genetically modified materials must be labeled. However, the regulations do not provide specifics on testing methods and other criteria. Only in January 2000 was a threshold of 1 percent for adventitious contamination published; no testing method has

been defined. The vagueness of these regulations places a serious burden on exporters. For more information see http://www.useu.be/biotech.

In May 1997, the EU adopted the Novel Foods Regulation, which governs food safety assessments and labeling for genetically modified food. Although the regulation calls for labeling of all new processed foods and food ingredients, including those containing GMOs, it does not provide specifics on tolerances, testing methods, or other criteria. Because the Novel Foods Law was passed after the EU had approved sale and import of "BT-corn" and "Round-up Ready" soybeans, another regulation was passed in May 1998 to require labeling of foodstuffs derived from these two GMOs. The regulation went into force in September 1998. As the requirement lacks specifics on testing, tolerances, and other details, implementation of the regulation may vary among individual Member States.

Specified Risk Material (SRM) Ban: On July 30, 1997, the European Commission adopted Commission Decision 97/534/EC, commonly known as the SRM ban. The goal of the ban is to avoid health risks related to transmissible spongiform encephalopathies (TSEs), such as BSE (mad cow disease) which is linked to new variant Creutzfeldt-Jakob disease in humans. The ban prohibits the use of SRMs (defined as the skull, tonsils, ileum and spinal cord of cattle, sheep and goats aged over one year, and spleens of sheep and goats) in any products sold in the European market.

The original date of implementation was July 1, 1998, but this was moved forward several times due to controversy over product sector coverage. In addition to food and feed, the ban would have significantly affected production of pharmaceuticals, cosmetics , medical devices and fertilizer. In September, 1999, the EU amended and implemented specific regulations for SRMs on medical products for human use (Directive 99/820EC). It also provided guidelines on how companies would comply with this directive. Thus far, it appears U.S. companies have successfully complied with it.

In June, 2000, Commission Decision 2000/418/EC was adopted repealing Commission Decision 97/534/EC. This new measure limits the scope of the ban to food, feed and fertilizer and requires slaughterhouses and authorized meat cutting and processing plants in all member states, no matter their BSE status, to remove SRMs mentioned above. The UK and Portugal, which have a higher incidence of BSE, must also remove the entire head, thymus, spleen, intestines and spinal cord of cattle over 6 months old, as well as the vertebral columns of cattle over 30 months old. Certain slaughtering techniques which entail risk of contamination into the bloodstream are also prohibited.

The measure is effective October 1, 2000 for all EU member states. Based on an EU evaluation of their BSE status, third countries exporting food, feed or fertilizer products to the EU may be required to remove some/all the material mentioned above, effective April 1, 2001. The EU currently recognizes only New Zealand, Argentina, Norway and Paraguay as provisionally BSE-free. The United States is provisionally recognized as low risk.

Commission Decision 2000/418/EC will apply until introduction of new EU legislation on protection against TSEs, which is currently under review by the EU Council and Parliament.

Testing of animals: A 6th amendment proposal to the Cosmetics Directive (76/76/EEC) was to have established a marketing ban on products tested by animals as of June 30, 2000. An adaptation of the Directive delayed this marketing ban for two years, until June 30, 2002. A 7th draft amendment would ban all testing of animals in the EU. Such testing would still be possible if it is done outside the EU. The 7th amendment is currently under consideration by the Council and the European Parliament.

Medical Devices: A Draft Commission Decision concerning Medical Devices and Transmissible Spongiform Encephalopathies (TSEs) released on May 16 limits the use of animals in the manufacturing process to those animals no less than 6 months of age, with no declared diseases.

End of life legislation: Currently three types of waste streams and a substance ban are being examined:

- End-of-Life-Vehicles Directive: the Council and the European Parliament approved a proposal in May 2000 to reduce waste by looking at how old cars can be recovered and recycled for use in new products. Car owners would have to turn their vehicle to authorized networks in order to obtain appropriate "certificates of destruction" required to de-register vehicles. Manufacturers would be obliged to recycle or scrap the vehicles. This proposed Directive will apply from January 1 2007, but individual states will have the authority to implement its provisions earlier. All cars put on the market after July, 1 2003 will no longer be allowed to contain heavy metals such as cadmium, lead and hexavalent chromium.
- Proposal on take-back and recycling of waste from electrical and electronic equipment (WEEE): This Commission proposal targets a wide variety of electrical and electronic equipment such as household appliances (refrigerators, washing machines, microwaves), as well as IT and telecomm equipment such as laptops, printers, pocket calculators, etc. The Council (Member States) and European Parliament must agree to the proposal before it becomes law.
- A related proposed Directive on the restriction of certain hazardous substances in electrical and electronical equipment will prohibit various heavy metals and brominated flame-retardants in new electrical and electronic equipment as of January 2008. This proposal will also require Council and European Parliament support before becoming EU law.
- The Battery Directive: A Commission-proposed revision seeks to expand the scope of batteries that are subject to collection requirements. The 1991 Directive only requires the collection of batteries which exceed a threshold for hazardous substances (mercury, cadmium and lead). The Commission proposes to make collection requirements compulsory for all batteries. An industry coalition of Nickel/Cadmium producers and users has proposed a voluntary collection and recycling program for these batteries. Although the Commission is considering the voluntary plan, it is

moving forward with the above-mentioned revision. The revision would also place a total ban on all Nickel/Cadmium batteries as of 2008.

The Commission has recently adopted all proposals but the Battery Directive. The European Parliament and Council will need to approve these proposals under the co-decision procedure.

Standards, Testing, Labeling, and Certification: EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the EU's "new approach," which streamlines technical harmonization and the development of standards for certain product groups, based on "essential" health and safety requirements, generally points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures within the EU. The European standardization process, however, remains generally closed to U.S. stakeholders' direct participation.

Standardization: Standardization continues to play an increasingly significant role in U.S.-EU trade relations. The U.S. Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to half of all U.S. exports to Europe. Given the large volume of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been some progress with respect to the EU's implementation of various legislation, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters. These include lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by EU Member States of the legislation that is in place; overlap among Directives dealing with specific product areas; gray areas between the scope of various Directives; unclear marking and labeling requirements for regulated products before they can be placed on the market; and a frequent tendency to rely on design-based, rather than performance-based, standards. Such problems can impede U.S. exports to the EU.

Mutual Recognition Agreements: The EU is implementing a harmonized approach to testing and certification as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products. One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the United States which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, which delays the process and adds costs for U.S. exporters.

The United States and the EU have negotiated a Mutual Recognition Agreement (MRA) for several important sectors as a means of facilitating trade, while maintaining our current high levels of health, safety and environmental protection. MRAs permit U.S. exporters to test and certify their products to the requirements of the EU in the United States, and vice versa. The U.S.-EU MRA entered into force on December 1, 1998. The MRA provides for transition phases ranging from 18 months to three years, depending on the specific sector.

Under the Transatlantic Economic Partnership (TEP), the United States and EU aim in 2000 to negotiate additional annexes to the US-EU MRA for marine safety equipment and possibly other sectors. U.S. and EU officials also plan enhanced regulatory cooperation in the fields of calibration services, telecommunications equipment, and cosmetics. In the area of services, the United States and EU will begin negotiations in 2000 on Mutual Recognition Agreements for insurance, architects and engineers.

Hushkits
The EU adopted a Regulation on 29 April 1999 limiting the registration and use within the EU of certain aircraft, including those equipped with "hushkit" noise reduction devices. Having failed to convince the EU to withdraw or suspend the Regulation, the US government took its case to ICAO on 14 March 2000. It is urging the organization to find the 15 EU member states in violation of obligations under the Chicago Convention and to require them to be released from enforcing the Regulation. Meanwhile discussions are underway in ICAO to establish a next generation noise standard.

Voluntary Ecolabeling Program: see EU Ecolabel

Packaging Labeling Requirements: In 1996, the Commission put forward a proposed Directive that would establish marking requirements for packaging, to indicate recyclability and/or reusability. The United States has expressed two potential concerns with this Directive. First, to the extent that the EU's new marking requirements differ from other marks widely used in the United States and being developed in the ISO, the United States is concerned that packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms wishing to sell their products abroad, without achieving any concomitant environmental benefit.

The second concern is related to Article 4 of the proposed Directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. Based on U.S. experience, this requirement is likely to pose a particular problem for glass and plastic containers, as it would require companies to create new molds solely for use in the European market. Discussions underway in the ISO may go a long way to resolving the potential problems, especially as the Commission has indicated its willingness to review the proposed EU marks in light of an eventual ISO agreement. There has been no progress in 2000 on the issue of marking of packaging.

A proposed Directive foresees further regulations for the packaging of tobacco products. The maximum authorized tar, nicotine and carbon monoxide yields of cigarettes will have to be printed on one side of the cigarette pack in the official language(s) of the Member State, to cover at least 30% of the corresponding surface (35% in the case of Member States with two official languages). Specific messages ("smoking kills") will have to appear on packages, as well as a general health warning.

Metric Labeling: The 1980 Directive adopted to harmonize systems of measurement throughout the European Union according to the international metric system will mandate metric-only labeling on most products entering the EU. An exception is made in a few specific areas such as air and sea transport in all Member States, distances and draught beer in the United Kingdom and Ireland. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. In February 1999, the European Commission proposed to amend the Directive by postponing its implementation date by 10 years, thus extending until 2009 the transitional period during which labeling of measurement in Europe can be indicated in both metric and American units. This amendment was approved by both the EU Council of Ministers and the European Parliament at the end of December 1999.

Beef Labeling: In July 2000, the EU agreed on new rules for compulsory beef labeling. The new rules were to apply in two stages, with stage one (covering the place of slaughter) to begin on September 1, 2000. The second stage (highlighting country of birth and fattening) was to begin on January 1, 2002. Requirements for third countries only include place of slaughter.

U.S. beef exports under the "Non-hormone treated cattle program" currently fulfill the Commission’s labeling requirements. Labeling claims agreed to in July 1998 under the voluntary scheme, such as USDA Grade, Choice, etc. can still be used in addition to the mandatory labeling.

Ban on Use of Growth Promoters: In early 1998, a WTO Appellate body upheld a ruling against the EU’s import ban on beef produced with growth promoters. This ban has been in place since 1989 and has severely limited U.S. exports of beef and other products to the EU since that time. In July 1999, WTO arbitrators determined that the EU beef ban results in a significant loss to U.S. beef exporters, and that the United States was entitled to suspend tariff concessions covering EU trade in the amount of $116.8 million per year. The United States then announced the final list of products from the EU subject to punitive 100 percent ad valorem duties, effective July 29, 1999. The United States, however, remains willing to discuss the issue of compensation, as an interim step until the EU lifts its import ban.

In May 2000, the European Commission, following an EU scientific committee opinion, proposed to ban definitively the use of estradiol in farm animals both for growth promotion and therapeutic purposes and to maintain the current prohibition on the five other hormones on a provisional basis while it seeks more complete scientific information. The Commission states that this provisional ban would comply with the ruling of the Appellate Body. As this legislation is under co-decision with the European Parliament, final implementation will not be for 12-18 months. The Commission's effort to replace its eleven-year old ban with a new "provisional" ban is an attempt to bring it into compliance with the WTO decision. Since the EU has not produced new scientific evidence of harm, the U.S. contends its actions do not comply with the WTO ruling.

Meanwhile, on June 18, 2000, the President signed into law the Trade and Development Act of 2000 which requires USTR to revise retaliation lists every 180 days unless compliance with the WTO ruling is imminent or the affected U.S. industry affected agrees with USTR not to revise the list. The EU has requested WTO consultations on the U.S. "carousel" retaliation legislation.

Veterinary Equivalency: As part of the 1992 single market initiative, the EU introduced new import controls for all animals and animal products. To avoid any trade disruptions, the United States and EU began consultations, which have progressed towards a bilateral agreement to recognizing each other's veterinary inspection systems as equivalent. The agreement incorporates the provisions for equivalence included in the Uruguay Round Sanitary and Phytosanitary Agreement. In July 1999 the United States and the European Union signed the Veterinary Equivalency Agreement in Brussels. The agreement entered into force on August 1, 1999.

The agreement covers more than $1.5 billion in U.S. animal and animal product exports to the EU and an equal value of EU exports to the United States.

The concept of the equivalency agreement allows veterinary inspection requirements to differ from country to country but ensures the United States' right to establish its own level of public health protection. To date, the EU has also concluded veterinary equivalency agreements with Canada, the Czech Republic and New Zealand. Negotiations are ongoing with Australia, Argentina, Uruguay and Chile.

The first Joint Management Committee meeting on implementation took place in July 2000 and working groups were established on audits and animal disease.

Aflatoxin Limits: In July 1998, the EU adopted a regulation harmonizing maximum levels of aflatoxin in peanuts, tree nuts and dried fruits, cereals and milk, effective January 1, 1999. At the same time, a directive specifying sampling methods to be used after 31 December 2000 was adopted. The United States considers the maximum limits unjustifiably low in relation to consumer exposure and risk and believes that these levels will lead to trade disruptions without a corollary increase in consumer protection. Also, the sampling procedure will increase handling costs with no appreciable reduction of aflatoxin contamination in consumer products and will likely lead to large numbers of lots being rejected when in fact the commodities are safe. The development of harmonized aflatoxin regulations in the EU has coincided with Codex discussions on this issue; however, within Codex the discussion was limited to peanuts for further processing. As a result of these two mutually influencing processes, the EU aflatoxin limit on peanuts for further processing is in line with the level adopted by Codex. The EU sampling plan and the sampling plan adopted by Codex are still divergent and the Codex sampling plan could only be adopted on an interim basis to provide time for experts to clarify some of the issues raised by the EU.

Restrictions Affecting U.S. Wine Exports to the EU: Current EU regulations require imported wines to be produced with only those oenological practices (i.e., wine treating materials and processes) authorized for the production of EU wines. However, since the mid-1980's U.S. wines have been permitted entry to EU markets by means of a series of extensions to temporary EU regulatory exemptions. Without these "derogations", the majority of U.S. wines would be immediately barred from entering the EU. The derogations have been renewed until 2003, with a Commission review in 2000. EU regulations also require a wine-import certification document for each wine in each shipment. While certain qualifying U.S. producers are permitted to use a simplified procedure, others must go through the full documentation and testing process. The United States and the EU continue formal negotiations on these and other wine-related issues to ensure that the EU market remains open to U.S. wine.

Canned Fruit: The U.S. cling peach industry has complained that the EU provides excessive support to certain Member States' canned fruit industry and that the EU has failed to observe and enforce a commitment made in the 1985 U.S.-EU Canned Fruit Agreement (CFA) not to subsidize EU processing operations for peaches in syrup. The U.S. industry also has claimed that fraud by Greek peach processors and growers in the EU's minimum grower price and fruit withdrawal programs is undermining the no-processing subsidies commitment made by the EU in the CFA, and that the sale of subsidized Greek canned peaches in the U.S. and a number of foreign markets is harming the U.S. industry. The U.S. Government, along with officials from several other countries, has consulted with the EU on this issue several times. In July 2000 the EU introduced a proposal to reform the fruits and vegetable sector.

Discrimination in the Utilities Sector: In 1990, in an effort to open government procurement markets within the EU, the EU adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The Directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. The Directive's discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. states and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO Government Procurement Agreement, which took effect on January 1, 1996. The 1994 agreement, however, did not end the discrimination with respect to telecommunications procurement.

The Utilities Directive stipulated that where there is effective competition in the telecommunications services market, the procurement for the provision of these services may be exempt from the scope of the Directive. In June 1999 the Commission issued a Communication listing telecommunications services considered as exempted. While the service lists were comprehensive, the geographical areas concerned omitted some member states. On the 10 May 2000 the Commission proposed a modification to the Directive which would make the removal of the telecommunications sector from the provisions of the Directive unconditional. Member States would have to approve the proposal before it becomes law.

Broadcast Directive and Motion Picture Quotas: In 1989, the EU issued the Broadcast Directive which included a provision requiring that a majority of entertainment broadcast transmission time be reserved for European origin programs "where practicable" and "by appropriate means." By the end of 1993, all EU Member States had enacted legislation implementing the Broadcast Directive.

The process begun by the Commission in 1993 to revise the Broadcast Directive in an effort to strengthen quotas was concluded in April 1997 through a conciliation committee that resolved differences between the European Parliament and the Council. By the time an agreement was reached on a revised Directive, the divisive issue of strengthening European content quotas and expansion of the Directive's scope to new services had fallen by the wayside despite the Parliament's protectionist line. The United States continues to monitor developments with respect to the Broadcast Directive, which will be up for revision again in 2002.

Computer Reservation Services: U.S. computer reservation systems (CRS) companies have faced problems in the EU market, since several Member State markets are dominated by a CRS owned by that State's flag air carrier. Past cases have eventually been resolved after U.S. government intervention or recourse to national administrative and court systems.

Acting on a complaint filed in 1996, the United States Department of Justice (DOJ) asked the EU competition authority to investigate a range of anti-competitive practices by a European firm. This was the first case under the positive comity provision of the 1991 EU-US Antitrust Cooperation Agreement. The EU investigation absolved two of the EU partner firms in 1999, but issued a statement of objections to a third. The U.S. firm and the EU firm reached a resolution of the issues between them. Moreover, the U.S. firm and other firms under investigation have reached similar agreements. Based on these agreements, the Commission announced in July 2000 that it had closed its investigation.

Airport Ground Handling: In October 1996, the EU issued a Directive to liberalize the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can apply for exemptions to continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with individual EU Member States. The EU is currently preparing a report on the effects of the 1996 Directive. The report is expected to be completed in 2001.

Postal Services

The European Commission proposed on 30 May 2000 a further liberalization of the postal sector to open up more services to competition from private operators. The proposal would require Member States to open up competition by 1 January 2003 for the mailing of all packages weighing over 50 grams (currently its open for packages over 350 grams), all outgoing mail to other Member States, and all express mail. The total market opening is estimated to represent on average approximately 20% of universal service providers' revenues from postal services. Some Member States have already opened up their postal markets further than has been proposed by the Commission and therefore the impact of the proposal on market opening varies from one Member State to another.

Discriminatory Value-Added Tax Treatment: The EU has adopted a Directive on the revision of VAT arrangements for telecommunications service provision. When these services are supplied to final consumers within the EU the Member States concerned can require non-EU suppliers to register for VAT. Member States had until 1 January 2000 to implement the new Directive.

The European Commission has also presented a proposal for a Directive (7 June 2000) to modify the rules for applying value added tax to certain services supplied by electronic means as well as subscription-based and pay-per view ratio and television broadcasting. The proposed Directive's starting point is that goods delivered electronically should be regarded as services and that services should be taxed in the place of consumption. The potential impact on US businesses would depend on whether they are established in the EU and whether they are selling digitally transmitted goods to businesses or to final consumers. US based businesses selling EU final consumers would have to register for VAT in at least one Member State. The US based business would charge VAT at the rates of the Member State where it is registered and discharge all its EU VAT obligations with that Member States' administration. Businesses selling less that 100,000 euro of services into the EU would be exempted from this obligation according to the proposal, which needs the unanimous approval of EU countries before coming to law. Because global solutions are required, the USG has urged the EU to await completion of work in the OECD on Internet taxation before moving ahead.

Telecommunications Market Access: U.S. telecommunications equipment industry access to EU member nations varies widely from relatively open to nearly closed. As described in the section on government procurement, most EU Member States discriminate against non-EU bids in the telecommunications sector. In addition, market access is impeded through standards and standard-setting procedures, testing, certification and attachment policies.

Under the WTO Agreement on Basic Telecommunications Services, eleven Member States made commitments to provide market access and national treatment for voice telephony services as of February 5, 1998, the date the agreement entered into force. Four Member States have phased in or will phase-in these commitments after the entry into force of the agreement: Spain (December 1, 1998), Ireland and Portugal (January 1, 2000) and Greece (January 1, 2003). Four Member States qualified their commitments further by maintaining foreign investment restrictions: France permits only 20% direct investment for radio-based networks and limits investment in France Telecom; Italy limits foreign investment in STET; Portugal limits foreign investment at 25 percent; and Spain limits foreign investment by government-owned operators. The European Communities and its Member States also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement.
Implementation of the WTO agreement has proceeded well for the most part, although some Member States have not yet met all of their obligations. The Commission is closely monitoring Member State compliance with the Basic Telecom and regulatory commitments and has initiated more than 50 infringement proceedings for non-compliance.

Based on a broad, public review, the Commission is proposing a revised regulatory framework to take into account technological convergence and market developments. Under the proposal, slated to come into effect in 2003, the current 20-plus directives would be replaced with six with the aim of increasing both flexibility and consistent application of the rules by Member State regulators.

Investment Barriers: The EU’s competency in investment issues is evolving and it has a growing role in defining the way in which U.S. investments in EU Member States are treated. Still in many instances Member State practices are of more direct relevance to U.S. firms. Under the 1993 Maastricht Treaty free movement of capital became an EU responsibility and capital controls between both EU Member States and Member States and third countries were lifted. However, a few Member State barriers existing on December 31, 1993 remain in effect, but EU law can now supersede these. Right of establishment issues, particularly with regard to third countries, are a shared competence between the EU and the Member States. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes. In general, the EU supports the notion of national treatment for foreign investors, and EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a "Community undertaking," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed.

Ownership Restrictions: Under EU law the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted.

Reciprocity Provisions: EU banking, insurance and investment services Directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. U.S. firms' right to national treatment in this area was reinforced by the EU's GATS commitments. In the EU Hydrocarbons Directive, the notion of reciprocity may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the EU. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

Lack of Intellectual Property Protection: The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant WIPO conventions, and they and the EU regularly join with the United States in encouraging other countries, primarily developing ones, to sign up to and fully enforce high IPR standards, including those in the TRIPs Agreement. However, there are a few Member States, including Greece, Denmark, Ireland and Italy with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement, about failure to fully implement the WTO TRIPs Agreement.

Designs: In June 1999, the European Commission proposed a Regulation on the European Community Design. Under the proposed Regulation, once a design had been registered with the Office for Harmonization (which already handles applications for the registration of the Community Trademarks), it would qualify for protection in all fifteen EU Member States.
The proposed Regulation on the European Community Design would:

- define what constitutes a design;
- establish criteria for protection (a design would have to be new and have an individual character;
- fix the duration of protection (5 to 25 years);
- fix the scope of protection (the designer would have the exclusive right to use the design and prevent any third party from using it);

- establish the limits to the design right (e.g. it would not normally cover interconnection between components); and
- establish rules on the nullity of the registration of a design.

National registration of designs, under rules harmonized by Directive 98/71/EC (Directive on Design Protection), will co-exist with the Community Design.

A provision in Directive 98/71/EC known as the "repair clause" has been hotly debated since the Directive's appearance due to diverging Member State and industry views over design protection of spare auto parts. U.S. firms also have expressed different opinions on the issue, with U.S. auto manufacturers favoring strong protection for spare car body parts, and insurance companies and spare parts manufacturers preferring more flexibility in the Directive. In the end, the EU decided to remove protection for spare parts from the Directive pending further study, but to leave open the possibility of replacing it in a future amendment. The proposed Regulation on the European Community Design also excludes the registration and protection of designs of spare components of complex products, such as visible car spare parts.

Trademarks:
Registration of trademarks with the European Community trademark office (official name: Office for Harmonization in the Internal Market – OHIM) began in 1996. OHIM, located in Alicante, Spain issues a single Community trademark which is valid in all 15 EU Member States.

Trademark Exhaustion: The Trademark exhaustion principle limits a trademark owner's ability to resort to remedies against importers/distributors of trademarked goods outside channels authorized by the trademark owner. The current EU regime supports the principle of "Community exhaustion," which allows resale of trademarked goods within the fifteen Member States once the trademark owner licenses their sale in any EU country.

In 1998 a European Court of Justice ruling (in Silhouette v. Hartlauer) upheld the legality of Community trademark exhaustion within the EU. The European Commission has defended the principle by maintaining that Community exhaustion heightens competition within the internal market. However, Member State opinion remains divided and at the insistence of the U.K. and Sweden, the Commission began a study into the economic impact of Community exhaustion in the Member States. European discount chains prefer, and have actively lobbied for, a system of "international exhaustion," which limits the trademark owner's right to control distribution of goods once he/she licenses them for sale anywhere in the world. The Commission's study indicated mixed results of changing to international exhaustion, with minimal impact for certain sectors (alcoholic drinks, confectionary), whereas impact may be significant for others (consumer electronics, footwear and domestic appliances). The Commission held hearings on the study in April 1999. In May 2000, the Commission announced that it would not propose a change to the current Community-wide exhaustion regime. However, Sweden made it clear it may re-open the debate during its EU Presidency, which begins January 2001.

Madrid Protocol: The World Intellectual Property Organization's (WIPO) Madrid Protocol, negotiated in 1989, provides for an international trademark registration system permitting trademark owners to register in member countries by filing a standardized application. The European Community has not joined the Madrid Protocol although most Member States have. Following a US-EU compromise agreement on voting provisions in the Protocol, which had previously prevented US accession, the US began the process for access to the Madrid Protocol.

Geographical Indications: U.S. industry has expressed concern about the 1992 EU Regulation on "Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs" as amended by a 1997 Regulation. Some believe it does not achieve a balance between protection for legitimate trademarks and legitimate geographical indicators. In practice, the Regulation could bring registered trademarks in conflict with registered geographical indicators. In addition, third country applicants do not appear to have the same access as EU parties to the provisions of the Regulation covering registration and other elements. For these reasons, the U.S. requested formal WTO consultations with the EU in 1999.

Patents: Patent filing and maintenance fees in the EU and in its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. In an effort to introduce more reasonable costs, the European Patent Office (EPO) reduced fees for filing by 20 percent in 1997.

European Community Patent: The European Commission proposed in July 2000 a regulation that would harmonize patent issuance in Member States and establish a European Community Patent. According to the Commission, the regulation would reduce the cost of patenting in Europe and provide legal certainty to patent holders by:

- requiring no further language translations beyond the standards of the European Patent Convention;
- suggesting the establishment of a centralized patent court to handle infringement and validity cases.

Utility Models: In 1997 the European Commission proposed a Directive on utility models to harmonize a level of protection in the Member States for industrial applications lower than that granted for patents. Under the Directive, protection would apply to "any inventions susceptible to industrial application, which are new and involve an inventive step" for a maximum of ten years. Utility model protection may also provide temporary protection pending granting of a patent. Business groups have criticized the Directive as being unclear and ambiguous, noting that implementation may do more harm than good by introducing additional business costs. It is unlikely the Directive will reach adoption in the near term. However, both European and U.S. industries are united in disagreeing with the Commission that harmonization of this type is needed in Europe. The European Commission presented an amended proposal in June 1999, incorporating many of the

European Parliament's March 1999 proposed amendments including a clearer definition of inventive activity distinguishing the utility model from the patent.

Biotech Patenting: In 1998, after years of debate, the EU Council adopted a Directive on legal Protection of Biotechnological Invention. The Directive harmonizes EU Member State rules on patent protection for biotechnological inventions. Member States must bring their national laws into compliance with the Directive by July 30, 2000. The Directive excludes plant and animal varieties from patentability and, although a positive development for U.S. firms, will not provide the same level of patent protection that is provided in the United States for biotechnological inventions. In addition, the Directive is not binding on the European Patent Office.

Copyrights: In April 1998, the European Commission proposed a Directive on the “Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society”. The Directive would require Member States to implement harmonized Regulations on the protection of copyrights and is seen as a first step in granting copyright protection for works in digital form. As of mid-2000, the Directive was still in the EU decision-making process. The European Parliament may soon propose amendments to the current draft, favoring stronger copyright protection. Compromise legislation should emerge under Sweden's EU Presidency in the first half of 2001.

Copyright Protection for Databases: An EU Directive on the legal protection of databases extends copyright protection for fifteen years to the contents of a database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The U.S. business community, while supportive of protection for databases as essential to a sound legal framework for Europe’s information society, remains concerned about the impact the reciprocity provisions of the Directive will have on U.S. publishers of databases. Scientists worry that the Directive will make access to databases prohibitively expensive although the Directive permits Member States to allow exemptions for groups accessing data for research or education.

In July 1999, the European Commission decided to refer Greece, Ireland, Luxembourg and Portugal to the European Court of Justice for failure to implement the 1996 Directive on the legal protection of databases. It also decided to refer Ireland and Portugal to the Court for failure to adhere to international conventions concerning copyrights and related rights.

Data Privacy: The EU Data Protection Directive went into effect in October 1998. However, nine EU Member States missed the deadline and by January 2000, five - France, Luxembourg, the Netherlands, Germany and Ireland - had still not transposed the Directive into national law. The Commission has taken these Member States to the European Court of Justice. The directive seeks to protect individual privacy with regard to the storage, processing and transmission of personal data, while still permitting the free flow of data within the EU. It allows transmission of data to third countries if they are deemed by the European Commission to provide an adequate level of protection, or if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection. U.S. firms are concerned about lack of clarity in the definition of adequate protection and the potential for cumbersome requirements to execute a data transfer.

The United States and the European Commission reached agreement on a "safe harbor" arrangement that should lead to a finding of adequacy for the U.S. and ensure that data flows are not interrupted. As of this writing, we expect the arrangement to be in place by the fall. The arrangement would bridge the differences between the EU and U.S. approaches to privacy protection and ensure adequate privacy protection for EU citizens' personal information. Under the safe harbor arrangement, U.S. companies would be able to decide voluntarily to participate in the safe harbor and do so by self-certifying to the Department of Commerce.

CUSTOMS VALUATION

Tariffs and Import Taxes: Information on customs valuation is contained in Title II, Chapter three, of Council Regulation (EEC) No. 2913/92 of October 12, 1992, establishing the Community Customs Code, titled, "Value of Goods for Customs Purposes" (Articles 28 through 36). The primary basis for determining customs value set out in Articles 29 is:

> "... the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community..."

Article 29 lists the following conditions, which must be met in determining customs value:

- that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which are imposed or required by a law or by the public authorities in the community, limit the geographical area in which the goods may be resold, or do not substantially affect the value of the goods;

- that the sale or price is not subject to some conditional consideration for which a value cannot be determined with respect to the goods being valued;

- that no part of the proceeds of any subsequent resale disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 32; and

- that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

The "price actually paid or payable" in Article 29 refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Articles 32 and 33 provide for adjustments to the value for customs purposes. Article 32 lists charges that are added to the customs value, such as, commissions and brokerage, costs of containers, packing, royalties and license fees, and the value of goods and services supplied directly or indirectly by the buyer in connection with the production and sale for export of the imported goods. Article 33 lists charges that are not included in the customs value, such as, charges for transport, charges incurred after importation, charges for interest under a financing arrangement for the purchase of the goods, charges for the right to reproduce imported goods in the Community, and buying commissions.

Effective July 1, 1995, the Commission amended Article 147(1) of Regulation 2454/93 of the Customs Code which affects valuation in the case of successive sales. Previously, importers had a certain amount of freedom to select whichever export sale in a chain of sales they desired. This amendment "defaults" valuation to the last sale, however, allows the value of an earlier sale if it can be demonstrated that such a sale took place for export to the EU. The evidentiary requirements to support the bona fides of any earlier sales will be based upon commercial documents such as purchase orders, sales contracts, commercial invoices, and shipping documents.

IMPORT LICENSES

The integrated tariff of the European Union, known as Taric, is designed to show various rules applying to specific products being imported into the customs territory of the EU or, in some cases, when exported from it. To determine if a license is required for a particular product, check column five of the Taric for the code "CLI."

In addition, many EU Member States maintain a list of goods subject to import licensing. For example, Germany’s "Import List" (Einfuhrliste) includes goods for which licenses are required, their code numbers, any applicable restrictions, and the agency that will issue the relevant license. The Import List also indicates whether the license is required under German or EU law.

IMPORT/EXPORT DOCUMENTATION

The official model for written declarations to customs by the normal import or export is the Single Administrative Document (SAD). Other forms may be used for this purpose where the provisions of the customs procedure in question permit.

Information on import/export forms is contained in Title VII, of Council Regulation (EEC) No. 2454/93 of July 2, 1993, which lays down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (Articles 205 through 221). Articles 222 through 224 provide for computerized customs declarations and Articles 225 through 229 provide for oral declarations.

Additional information on import/export documentation can be found in Title III, of Council Regulation (EEC) No. 2913/92 of October 12, 1992, establishing the Community Customs Code (Articles 37 through 57).

Goods brought into the customs territory of the Community are, from the time of their entry, subject to customs supervision until customs formalities are completed.

Goods presented to customs are covered by a summary declaration which is lodged once the goods have been presented to customs. The customs authorities may, however, allow a period for lodging the declaration which cannot extend beyond the first working day following the day on which the goods are presented to customs. The summary declaration can be made on a form corresponding to the model prescribed by the customs authorities. However, the customs authorities may permit the use, as a summary declaration, of any commercial or official document which contains the particulars necessary for identification of the goods. The summary declaration may also be in computerized form.

The summary declaration is to be lodged by:

- the person who brought the goods into the customs territory of the Community or by any person who assumes responsibility for carriage of the goods following such entry; or

- the person in whose name the person referred to above acted.

Non-EU goods presented to customs must be assigned a customs-approved treatment or use authorized for such non-Community goods. Where goods are covered by a summary declaration, the formalities for them to be assigned a customs-approved treatment or use must be carried out:

- 45 days from the date on which the summary declaration is lodged in the case of goods carried by sea;

- 20 days from the date on which the summary declaration is lodged in the case of goods carried other than by sea.

Where circumstances so warrant, the customs authorities may set a shorter period or authorize an extension of the period.

Phytosanitary certificates: Phytosanitary certificates are required for most fresh fruits, vegetables, and other plant materials.

Sanitary certificates: For commodities composed of animal products or by-products, EU countries require that shipments be accompanied by a certificate issued by the competent authority of the exporting country. This applies regardless of whether the product is for human consumption or pharmaceutical use or strictly for non-human use (e.g., veterinary biologicals, animal feeds, fertilizers, research). Many of these certificates are uniform throughout the EU but the harmonization process has not been finalized yet. During this transition period, certain Member state import requirements continue to apply.

LABELING AND MARKING REQUIREMENTS

EU Ecolabel: In 1992, the EU adopted an EU-wide ecolabeling scheme. It is a voluntary mark, awarded to producers who can show that their product is less harmful to the environment than similar products. The EU ecolabel, if available for the products in question, replaces existing national label equivalents. Ultimately, as many as twenty-five consumer products, including washing machines, dishwashers, soil improvers, toilet paper, paper towels, laundry detergents, light bulbs (single-ended and double-ended), paints and varnishes, bed linens and t-shirts, photocopy paper, and refrigerators, may be covered. Products without the EU ecolabel can still enter the EU as long as they meet the existing health, safety, and environmental standards. Applications for an EU ecolabel must be addressed to an EU competent body and should include all necessary certification and documents. EU ecolabel evaluation will be done based on product group definitions and ecological criteria. Each decision to award the EU ecolabel must be cleared with other Member States competent bodies. Objections can be raised within a 30-day period. If there are none, the EU ecolabel is then awarded, against a fee for application, for a specified period of use.

Despite an ongoing dialogue between the EU and U.S. interest groups, the U.S. government is concerned that technical bilateral talks on concerns about the scheme that were committed to in 1996 did not materialize. Recently, however, EU representatives committed to meet on the subject in 1999. The United States looks forward to these meetings and will continue to monitor closely the development of, and revision to, the EU ecolabeling scheme. U.S. concerns are that the EU ecolabeling program may become a de facto trade barrier; may not enhance environmental protection in a transparent, scientifically sound manner; may not be open to meaningful participation by U.S. firms; and may discriminate unfairly against U.S. business.

CE Mark: The goal of the European Union's standardization program under the "New Approach" is to streamline technical harmonization and the development of standards for certain product groups, including, among others, machinery, toys, construction products, electromagnetic compatibility, personal protection equipment, non-automatic weighing machines, medical devices, gas appliances, hot water boilers, and telecommunication terminal equipment. Under the new approach, directives cover essential safety and health. The three regional European standards organizations, CEN, CENELEC and ETSI are mandated by the Commission to develop technical standards that are consistent with the essential health and safety requirements of EU directives.

Products manufactured to these standards adopted by CEN, CENELEC and ETSI, and published in the Official Journal as harmonized standards, would be presumed to conform to the requirements of EU directives. The manufacturer then applies the CE Mark and issues a declaration of conformity. With these, the product will be allowed to circulate freely within the European Union. A manufacturer can choose not to comply with the CEN/CENELEC/ETSI standards, but then must demonstrate the product meets the essential safety and performance requirements. A product manufactured in conformity with EU legislation in one Member State will be guaranteed automatic access to the markets of all the other Member States. U.S. manufacturers who obtain the CE mark also will be guaranteed access to all of the markets in the Member States of the European Union.

It is important to note that the new approach deals with large families of products--machinery, gas appliances, pressure equipment, toys, and construction products--or horizontal risks such as those addressed in the EU's Electromagnetic Compatibility Directive, as opposed to being product-based as under the old approach. It is possible that some products may be governed by more than one directive because different risks may be dealt with under separate directives. In cases where more than one directive may apply, the CE mark can only be affixed if the product complies with all of the appropriate provisions in all of the directives applicable to the product.

EU directives are addressed to the Member States who have to transpose them into national law. The directives define a schedule for adoption, publication and implementation of national provisions. New approach directives also recognize a transitional period during which existing national provisions and new legislation will co-exist. In such cases, the manufacturer has a choice of following either of these series of conditions.

The CE mark addresses itself primarily to the national control authorities of the Member States and its use simplifies the task of essential market surveillance of regulated products. Although CE marking is intended primarily for inspection purposes by EU member state inspectors, the consumer may well perceive it as a quality mark.

The CE mark must be affixed to the product, to its data plate or, where this is not possible or not warranted on account of the nature of the product, to its packaging, if any, and to the accompanying documents by the manufacturer, the authorized representative in the community or in exceptional cases by those responsible for placing the product on the market. The CE mark must be affixed visibly, legibly and indelibly. Where special provisions do not impose specific dimensions, the CE mark must have a height of at least 5 millimeters.

The CE mark is not intended to include detailed technical information on the product, but there must be enough information to enable the inspector to trace the product back to the manufacturer or the authorized agent established in the EU. This detailed information should appear not next to the CE mark, but rather on the declaration of conformity, the certificate of conformity (which the manufacturer or authorized agent must be able to provide at any time together with the product's technical file) or the documents accompanying the product. New approach legislation provides for the issuance of a declaration of conformity by the manufacturer and often requires a certificate of conformity from an independent certification body.

PROHIBITED IMPORTS

The Taric is designed to show various rules applying to specific products being imported into the customs territory of the EU or, in some cases, when exported from it. To determine if a product is prohibited or subject to restriction, check column five of the Taric for that product for the following codes:

CITES	Washington Convention on International Trade of Wild Flora and Fauna Threatened by Extinction.
PROHI	Import Suspension
RSTR	Import Restriction

STANDARDS (including ISO 9000 usage)

Standards, testing, and certification issues affect a substantial portion of the roughly $100 billion in American exports to the European Union. In fact, there have been estimates that peg the value of affected exports as high as $70 billion, when voluntary and quasi-mandatory product standards are considered. Prior to the introduction by the EU of a harmonized legal requirement, product standard, certification, and product mark, the market access of American exports to Member State markets ranged from considerable mutual recognition of U.S. certification (the UK) to virtually none (Germany). With the preemption of Member State requirements, $40 billion in U.S. exports to the Union of, inter alia, telecommunications and computer equipment, medical devices, pressure equipment, respirators and other personal protective equipment, and pharmaceuticals was affected.

The primary concern of the United States is that U.S.-based manufacturers should have full access to this system and not be placed at a competitive disadvantage as a result of product or production standards (such as ISO 9000) testing or certification requirements. Much effort has been devoted to assuring that the standards and regulatory system in use in Europe is transparent. The ultimate beneficiaries of this transparency would be the small and medium-sized firms who cannot afford a battery of international lawyers and engineers to safeguard their interests and advocate their cases during the standards-making process.

To address those concerns, the United States has concluded Mutual Recognition Agreements (MRAs) which will permit the U.S. and the EU to recognize each others testing, certification, and inspection requirements. Commission officials have concluded similar agreements with Canada, Australia, and New Zealand. When the MRAs are operational, U.S. firms will be able to have their products certified in the United States rather than in the EU, which they must do now. The costs will be significantly lower and U.S. products will, as a result, become more competitive.

STANDARDS (Agriculture)

Veterinary Equivalency: see trade barriers

Meat products: All beef, pork, wild game and farmed game meat, and horsemeat imported into the European Union for human consumption must come from slaughterhouses, cutting plants, and cold stores that have been approved by the EU. Shipments must be accompanied by an EU certificate, issued by FSIS. Since 1989 the EU has prohibited the import of meat from cattle treated with growth hormones.
(lists available on the Internet: http://www.useu.be/agri/estab.html)

Dairy products: As of April 1, 1997, the EU is requiring that imports of all dairy products be accompanied by a uniform health certificate. The U.S. Department of Agriculture's Agricultural Marketing Service (AMS) issues these certificates to firms on the list of establishments maintained by FDA and published by the EU. U.S. legislation on domestic dairy production is considered to provide sufficient guarantees for compliance with EU requirements, with the exception for somatic cell and plate counts for which companies have to provide additional guarantees. The U.S.-EU Veterinary Equivalency Agreement sets the conditions of equivalency, versus strict compliance, under which U.S. dairy products establishments can be placed on the new harmonized EU import list.
(list available on the Internet: http://www.useu.be/agri/estab.html)

Live Animals, frozen animal semen, embryos, and hatching eggs: Animals that qualify for export to the European Union are issued an health certificate signed by APHIS officials (USDA's Animal and Plant Health Inspection Service). To guarantee that semen, embryos and hatching eggs meet EU import requirements, the same type of background check on herds and flocks of origin is needed as for live animal shipments. Imports of embryos and semen have to come from an EU approved list of U.S. establishments. (lists available on the Internet: www.useu.be/agri/estab.html)

Animal Casings: Casings imported into the EU have to be sourced from an EU approved list of U.S. establishments. These establishments must be able to guarantee that they meet the EU's health requirements.
(list available on the Internet: http://www.useu.be/agri/estab.html)

Consumer-ready agricultural products: The EU is in the process of developing horizontal directives that would establish standards applicable to all food products. So far, directives have been adopted on labeling, pre-packaged and deep frozen food, substances in contact with food, additives, dietetic foods, protection of geographic designations and designation of origin, contaminants, novel foods and irradiation. Other proposals amending or implementing the existing directives and proposals on nutritional claims, added vitamins, flavorings, certain contaminants and a general food directive are in various stages of the legislative process.

Pesticide residue requirements: The European Union has developed EU-wide maximum residue levels (MRLs) for most commonly used pesticides. If no harmonized level has been established, individual Member State regulations are applicable.

Organic Production: The United States and the EU have postponed discussions on the mutual recognition of organic certification systems until the U.S. Organic Food Production Act is implemented. Until a mutual recognition agreement is reached, U.S. exporters must work through individual Member States to submit technical information on certified organic products on a case-by-case basis. For more information see http://www.useu.be/agri/organics

The EU organic product legislation requires that organic product certifiers satisfy the standards established by EN 45011/ISO Guide 65. Member States are implementing this requirement. USDA's Agricultural marketing Service (AMS) has developed a program providing assurances that organic certifiers meet the EN 45011/ISO Guide 65 requirement. This program was presented to the Commission and to the Member States. For more information on the AMS program please visit http://www.ams.usda.gov/lsg/mgc/iso65.htm

Foreign free trade zones / free ports

European Union laws and regulations provide that Member States may designate parts of the customs territory of the Community as free trade zones and free warehouses. Information on free trade zones and free warehouses is contained in Title IV, Chapter three, of Council Regulation (EEC) No. 2913/92 of October 12, 1992, establishing the Community Customs Code, titled, "Free Zones and Free Warehouses" (Articles 166 through 182).

Article 166 states that free zones and free warehouses are part of the customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

- Community goods are considered, for the purposes of import duties and commercial policy import measures, as not being on Community customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other that those provided for in customs regulations;

- Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

Articles 167-182 details the customs control procedures, how goods are placed in or removed from free zones and free warehouses and their operation.

The use of free trade zones vary from member state to member state. For example, Germany maintains a number of free ports or free zones within a port that are roughly equivalent to U.S. foreign-trade zones, whereas Belgium has none. A full list of EU free trade zones was most recently published in the EU's Official Journal number C345 of December 2, 1999.

VII EU INVESTMENT CLIMATE STATEMENT

Summary

The European Union and its fifteen Member States provide one of the most open climates for U.S. direct investment in the world, with well-established traditions concerning the rule of law and private property rights, transparent regulatory systems, freedom of capital movements and the like.

The treatment of U.S. investment is largely the responsibility of the individual Member States, and prospective investors should refer to specific Country Commercial Guides for details concerning the economic, political and social systems of the country or countries in which they are interested.

The European Union traditionally has had no role in determining the conditions under which third country investors could establish investments; as such, its main role was to ensure that firms (including those owned or controlled by non-EU nationals) already established in one Member State were not discriminated against by others. In 1993, however, the EU acquired responsibilities over capital movements and the treatment of new third-country investors. Thus, there is a possibility that discriminatory measures may arise in specific areas as the EU proceeds to "harmonize" member state approaches to third country investors, but the climate for U.S. investment is expected to remain excellent for the foreseeable future.

Openness to Foreign Investment

Historical Background

The European Union has perhaps one of the most hospitable climates for U.S. investment in the world. This reflects in part the process of European integration. One of the most remarkable, if least noted, aspects of the 1957 Treaty (Treaty of Rome) which established the European Community (now Union) is that it created a near-perfect investment treaty among the countries which are part of the EU. Under EU Treaty Article 48, EU Member States must allow investors from other Member States to establish and conduct business on a national treatment basis. Investors have the right to transfer capital and earnings freely, and are guaranteed national treatment on expropriation. Finally, any violation of these rights can be adjudicated by the European Court of Justice, which may hear cases related to violations of Treaty rights directly, or over-turn national court decisions found inconsistent with the Treaty. This was a remarkable achievement, given that the six original signatories to the Treaty had been at war with one another a only a decade previously.

The 1986 Single European Act further reduced barriers to intra-EU investment, and even created possibilities that companies from one Member State might receive better than national treatment in another. This is most obviously the case in the financial services sector, where, for example, German universal banks can conduct securities business freely in other Member States, even if local banks are not allowed by their licensing authority to do so.

Prior to the 1992 Treaty on the European Union, the Community itself had virtually no role in determining the conditions which would affect the entry of investors from third countries into the territories of the Member States. While the Member States were compelled by the treaty to grant national treatment to investors from other EU countries, they could erect and maintain barriers to investors from non–EU countries, consistent with their international obligations.
(Note: The latter include the treaties of friendship, commerce and navigation (FCN's), which the U.S. has with most EU countries, as well as obligations under the OECD codes on capital movements and invisible transactions.) The only role community law played was to ensure that a foreign-owned company that was established in one EU Member State received non-discriminatory treatment in other Member States as mandated under article 48 of the EU Treaty (Treaty of Amsterdam).

The EU's Current Role

The EU's ability to regulate member-state treatment of incoming foreign investment has grown considerably in 1993, when the free movement of capital between EU Member States and third countries became an EU responsibility and capital controls were lifted. In accordance with article 57 of the Treaty on the European Union, Member State measures in force on December 31, 1993 denying national treatment to third country investors are grandfathered. However, EU member states no longer have the authority to adopt measures affecting capital movements to or from third countries. That authority now rests with the EU itself. Per Article 57, "the Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving direct investment establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in community law as regards the liberalization of the movement of capital to and from third countries."

In June 1997, the Commission issued a document clarifying the scope of EU Treaty provisions on capital movements and the right of establishment. The Commission took this initiative because certain EU Member States had imposed limits on the number of voting shares that investors from other EU Member States could acquire in privatization operations. The Commission specified that such restrictions are illegal and that capital movements in the form of intra-Community investments can only be restricted in cases explicitly established by the Treaty: public order, public security, public health and defense.

Ownership restrictions and reciprocity provisions

EU Treaty articles 48 (establishment) and 57 (capital movements) have helped the EU achieve one of the most hospitable climates for U.S. investment in the world. However, restrictions on foreign direct investment do exist and others have been proposed.

Under EU law, the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU member states is also restricted.

EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. However, U.S. firms' right to national treatment in this area was reinforced by the EU's commitments under the GATS agreement.

Under the hydrocarbons Directive adopted in May 1994, however, the notion of reciprocity may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license to explore for and exploit hydrocarbon resources if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the EU. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

In May 1997, a Directive establishing a common framework for telecommunications licensing entered into force (Directive 97/13/EC), eliminating previous limitations on foreign ownership, including those previously affecting satellite communications. This opening is tempered, however, by article 18 of the Directive, which asks Member States to inform the European Commission if EU entities have difficulties obtaining similar licenses in third countries. In that event, if deemed necessary, the Council of Ministers may instruct the Commission by a qualified majority vote to negotiate comparable rights (access to licensing) in third countries. All such efforts, however, would be carried out without prejudice to EU obligations under international agreements (for example, the WTO/GBT).

The U.S. and the EU, in the OECD, the WTO and elsewhere, continue to discuss the EU's evolving role with respect to foreign investment and the developments noted above.

Conversion and Transfer Policies

All currencies of the Member States of the European Union are freely convertible (including the Euro), and the EU, like the United States, places virtually no restrictions on capital movements. Indeed, Article 56 of the Treaty of Amsterdam specifically prohibits restrictions on the movement of capital and payments between Member States and between Member States and third countries, with the grandfathered exceptions noted above. The adoption of a single currency (the Euro) in 11 of the 15 Member States on January 1, 1999 shifted currency management to the European Central Bank (ECB) and the EU Council of Ministers. As a result of this move, the Treaty provides for adoption of union-wide exchange controls, on approval by a qualified majority of the Council. Greece is slated to join the Monetary Union on January 1, 2001.

Expropriation and Compensation

The European Union does not have the right to expropriate property; this remains the exclusive competence of the Member States.

Dispute Settlement

Foreign investors can, and do, take disputes against Member State governments directly to local courts. In addition, any violation of a right guaranteed under the EU law -- which has been ruled supreme to Member State law, including Constitutional law -- can be heard in local courts or addressed directly by a foreign investor with a presence in a Member State to the European Court of Justice. Further, all Member States of the European Union are members of the World Bank's International Center for the Settlement of Investment Disputes (ICSID), and most have consented to ICSID arbitration of investment disputes in the context of individual bilateral investment treaties. While the EU is not itself a party to ICSID or other such arbitration conventions, it has stated its willingness to have investment disputes subject to international arbitration.

Performance requirements, incentives

With implementation of the economic and monetary union on January 1, 1999, political pressure for a coordinated tax policy has grown and tax incentives as a means of competing for investment are under increasing scrutiny. (See individual Country Commercial Guides for Member State practices).

Right to Private Ownership and Establishment

The right to private ownership is firmly established in EU law as well as in the law of the individual Member States. (See above concerning regulations with respect to establishment).

Protection of Property Rights

Property rights are respected and protected in the EU and its Member States. The EU and/or its Member States adhere to all major intellectual property rights agreements, and offer strong IPR protection, including implementation of the WTO TRIPS provisions. (See individual Country Commercial Guides for more details).

Transparency of the Regulatory System: Laws and Procedures

The EU regulatory system is generally transparent and accessible to concerned individuals. All laws and regulations are published in the Official Journal of the Community. However, there are areas where division of legal authority between the Commission and the Member States is not clear, or where Member State implementation of EU Directives is not fully transparent. (See also individual Member State Country Commercial Guides).

Efficient capital markets and Portfolio investment

The EU treaty specifically prohibits restrictions on capital movements and payments between the Member States and between the Member States and third countries.

Per Article 59 of the EU Treaty, where movements of capital to or from third countries cause, or threaten to cause serious difficulties for the operation of economic and monetary union, the Council may, by qualified majority, impose appropriate limitations on such flows for a period not to exceed six months. Monetary Union has spurred efforts to establish EU-wide capital markets. As this trend continues, pressure for more coordination among EU member state regulatory authorities is increasing. This should increase both market and regulatory efficiency. EMU provisions give the European Central Bank authority over the European banking system in certain areas. The ECB in July 1998 set substantial reserve requirements for EU banks, underpinning the soundness of the banking system. However, at present, bank supervision remains with the EU member states.

Some quasi-governmental European industrial standards setting bodies such as CEN and CENELEC do restrict foreign participation in their activities. Participation is effectively limited to those companies with manufacturing subsidiaries in the European Union.

Political Violence

Political violence is not unknown in Member States of the European Union, but it is, in general, extremely rare. Such incidents are almost always regional in nature, and individual country guides should be consulted for more details on problems in specific regions.

Corruption

In May 1997, the European Commission adopted a discussion document suggesting guidelines for the development of a coherent anti-corruption policy at the European level. However, there has been little follow-up to the recommendations, and EU Member States legislation on corruption is presently far from homogeneous. For instance: corruption is defined differently in different Member States; in some countries, companies convicted of active corruption can be sentenced, in others only the individual directly responsible; not all EU Member States consider the bribery of a foreign official an offence, and so on. Hence the Commission's argument for harmonization at the European level, which focused on the following areas:

(1) The illegality of corruption. The Commission had wanted the Member States to ratify by mid-1998 the first protocol of the EU Convention on corruption affecting EU financial interests, and to adopt as well as ratify the convention on corruption of EU or Member State officials by the end of 1998. To date, only a few EU Member States have ratified the Convention. At the multilateral level, the Commission argued in favor of common EU positions on (a) the illegality of active corruption of third-country officials by Europeans and (b) the illegality of corruption in the private sector.

(2) Tax deductions for bribes. In 1997, the Commission asked the Council to abolish tax deductibility of bribes, allowed in several EU Member States. This request was largely subsumed by the OECD agreement on bribery, which has been signed and ratified by seven of the fifteen EU Member States.

(3) Public procurement. The Commission examined how EU public procurement provisions could be improved to fight corruption. One step in this direction was formation of an EU Anti-Fraud Office (OLAF) in April 1999. In addition to fighting fraud affecting community financial interests, OLAF is charged with assisting EU Member states in the fight against such fraud.

(4) Accounting and auditing. The Commission called for directives on EU accounting and auditing standards to be amended to improve their effectiveness in fighting corruption. A June 2000 Commission strategy paper recommended that the EU adopt one set of accounting standards (IAS) to increase transparency and comparability of company accounts throughout the EU by 2005. The Commission is presently preparing a formal legislative proposal.

(5) Company blacklisting and civil remedies. In areas subject to Community financing, the Commission proposed to introduce company blacklists and anti-corruption commitments in contracts. Compiling blacklists has been

hampered by the fact that the Commission must rely on information submitted by Member States. To date, Member State submissions have been infrequent and insufficient in detail, according to a report by the EU Court of Auditors.

(6) Money laundering. The Commission had already proposed the adoption of a second protocol to the Convention on the EU's financial interests that would render criminal the laundering of money resulting from corruption and affecting the Community budget. No Member State has ratified the protocol; all 15 must do so before it can enter into force. In addition, a Commission proposal to strengthen the provisions of a 1991 EU regulation on money laundering is currently under consideration by the Member States and the European Parliament.

(7) Cooperation with third countries. The fight against corruption should be a priority of EU development policy, according to the Commission. Under the Cotonou Partnership Agreement signed in June 2000, EU trade and aid preferences to the African, Caribbean and Pacific (ACP) countries can be suspended in "serious cases of corruption".

Bilateral Investment Agreements

The EU does not yet have any bilateral investment treaties in the traditional sense, although virtually all the Member States have extensive networks of such treaties with third countries. However, the EU's "Europe," "Association" and other such agreements with preferential trading partners often contain provisions directly related to the treatment of investment, generally providing at least for establishment, and capital and profit repatriation.

Other regional or multilateral agreements addressing the admission of investors to which the Community and/or its Member States have adhered include:

- The OECD codes of liberalization , which provide for non-discriminatory and standstill for establishment and capital movements, including foreign direct investment;
- The Energy Charter Treaty (ECT), which contains a “Best Efforts” national treatment clause for the making of investments in the energy sector;
- The GATS, which contains an MFN obligation on all measures affecting the supply of services, including in relation to the mode of commercial presence.

OPIC and other Investment Insurance Programs

OPIC programs are not available in the EU as a whole, although individual Member States have benefited from such coverage. (See individual Country Commercial Guides).

Labor

Issues such as employment, worker training and social benefits remain primarily the responsibility of the Member States of the EU. However, the members are coordinating ever more closely their efforts to increase employment through macroeconomic policy cooperation, guidelines for action, the exchange of best practices, and programmatic support from various EU programs. The best information regarding conditions in individual countries are available through the labor and social ministries of the Member States. Helpful information from the EU can be found in the websites from the European Commission's Directorate General for Employment and Social Affairs (DGV) http:\\www.europa.eu.int/en/comm/eurostat/serven/home.htm).

In general, the labor force in EU countries is highly skilled and offers virtually any specialty required. The Member States regulate labor-management relations, and employees enjoy strong protection. The EU Member States have among the highest rates of ratification and implementations of ILO conventions in the world.

There is a strong tradition of labor unionism in most EU Member Countries. In many cases, the tradition is stronger than the modern reality. While the Nordic Member countries (Denmark, Finland, and Sweden) still have levels of membership on labor unions at near 80 percent or higher, many other large members, most notably France, Germany, and the United Kingdom, have seen their levels of organization drop nearly to U.S. levels (about 20-30 percent).

Foreign Direct Investment Statistics

According to U.S. statistics, the historical cost value of U.S. investment in the fifteen member states of the European Union as of end-1998 was USD 433.7 billion, or 44.2 percent of total U.S. direct investment abroad. The U.K. was the major EU host to U.S. foreign direct investment (FDI), with USD 178.6 billion, or 41.2 percent of the total in the EU, followed by the Netherlands (USD 79.4 billion, or 18.3 percent), Germany (USD 42.8 billion, or 9.8 percent), France (USD 39.1 billion, 9.0 percent), Belgium (18.9 billion, 4.3 percent) and Ireland (USD 15.9, or 3.7 percent). These historical data understate the current value of U.S. investment in Europe as much of it was undertaken between 1950 and the onset of the inflationary periods in the 1970s and 80s.

For virtually all EU member states, the largest "foreign" investors are in fact from other member states. Please consult individual country commercial guides for details.

VIII TRADE AND PROJECT FINANCING

EU financial assistance programs provide a wide range of support in the form of grants, loans, loan guarantees and co-financing for feasibility studies and infrastructure projects in the environmental, transportation, energy, telecom, tourism, public health and other key sectors. From a commercial perspective, these initiatives create significant market opportunities for European firms of American parentage and such firms' U.S.-based suppliers and subcontractors.

The EU supports projects within its Member States and EU-wide "economic integration" projects that cross over both internal and external EU borders. In addition, the EU provides assistance to third countries, such as those in Central and Eastern Europe (CEE) and in some of the republics of the former Soviet Union, that are seeking either membership in or closer association with the EU. The European Bank for Reconstruction and Development (EBRD) in London has co-financed some economic restructuring projects in these CEE countries, as has the Luxembourg-based European Investment Bank (EIB), whose lending scope also covers ACP/Lomé Convention signatory countries and Mediterranean countries. The latter also benefit from development aid from other EU sources, including the European Development Fund (EDF) and Meda. Humanitarian aid worldwide is managed by the European Community Humanitarian Office (ECHO).

A Word About EU Funds

The EU Structural Funds, including in particular the large European Regional Development Fund, were created in 1975 to assist economically weak and depressed regions inside the European Union that required industrial restructuring, and agricultural reconversion. The EU earmarked EURO 195 billion for projects under the Structural Funds programs during the 2000-2006 period. Tenders issued by EU Member State public contracting authorities during the implementation of projects supported by those EU grants are subject to EU public procurement legislation. In particular, the public tender must meet the EU legal requirements of eligible sector and minimum contract value. There are no overt prohibitions against the participation of U.S. companies, either as developers or concessionaires of projects supported partially by the Structural Funds or as bidders on subsequent public tenders related to such projects. All Structural Fund projects are co-financed by national authorities, and often by the private sector and may also qualify for a loan from the European Investment Bank. In addition to funding economic development projects proposed by the Member States or local authorities, the EU Structural Funds also support specialized projects promoting EU socioeconomic objectives through the Community Initiatives grant program.

The Cohesion Fund, with an EURO 18 billion (2000-2006) budget seeks to improve cohesion within the EU by funding transport infrastructure and environmental projects in Ireland, Portugal, Spain and Greece. These projects are generally co-financed by national authorities, the European Investment Bank and the private sector.

The European Union provides financial support to the Trans-European Networks (TENs) to develop infrastructure, strengthen cohesion and increase employment across greater Europe. These will total EUR 4.7 billion for 2000-2006. Launched at the Essen, Germany 1994 Council, the TENs are a series of transport, telecommunications and energy projects which are continually being expanded and upgraded. The TENs are largely financed by the private sector and non-EU sources. The EU does, however, provide loans from the European Investment Bank, loan guarantees from the European Investment Fund in Luxembourg, and partial feasibility study grants from the European Commission for the TENs. There are no overt EU restrictions on the participation of U.S. firms in the TENs.

The European Union provides technical and financial assistance to the countries in Central and Eastern Europe, as well as to the NIS countries. PHARE, the Poland and Hungary Assistance for Restructuring of the Economy, was established in 1989 but now grants assistance to thirteen countries in Central and Eastern Europe (CEEC). In 1999, PHARE's budget totaled approximately EURO 1.4 billion. The PHARE program will in the future focus on priorities linked to the adoption of the acquis communautaire, i.e. building up the administrative and institutional capacities of the applicant countries and financing investments designed to help them comply with Community law. The ISPA (Instrument for Structural Pre-Accession) grant program has been created for the ten Central and Eastern European countries that have applied for EU membership, and is modeled on the Cohesion Fund program. ISPA-funded programs will cover environmental and transport projects with a budget totaling EURO 1040 million per year during the next seven-year period (2000-2006). TACIS, the EU program of Technical Assistance to the CIS, was set up in 1990 with the same objectives as PHARE, but the geographical focus lies in fifteen countries of the former Soviet Union (Newly Independent States, NIS). TACIS's budget was EURO 462 million in 1999. Unlike EU programs which focus on stimulating development inside the EU, participation in projects supported by PHARE or TACIS is restricted to European or local (CEEC/NIS) companies (whether or not of American parentage), whose products have undergone their last substantial manufacturing transformation in the European Union or a CEEC/NIS country.

It is important for private sector representatives to meet with EU, American and other officials in the donor and lending countries in order to become acquainted with available financial support programs, and to bring to their attention any difficulties encountered related to tendering procedures. In addition, company representatives should be sure to visit with local officials in the recipient countries who play an invaluable role in assessing the needs of their country, developing the projects, evaluating the bids, and ultimately helping to award the final public contracts related to these projects.

In addition to financial and technical assistance programs, the European Union has created a wide range of research and development grant programs, such as Thermie and Altener in the energy sector, which are part of a larger EU research and technology policy called the Fifth Framework Program. The European Union also has educational grant programs, such as Erasmus and Sokrates.

IX Business Travel

Business Customs

Please see EU Member State Country data

Travel Advisory and Visas

Please see EU Member State Country data

Holidays

The European institutions generally follow the holidays of the EU Member State in which they are located. During the month of August and between Christmas and New Year (December 24-31), the European institutions are staffed with a minimum of personnel. For information on local holidays in the EU Member States, please see their Country Commercial Guides.

Work Week

Please see EU Member State Country Commercial Guides

Business Infrastructure

Please see EU Member State Country Commercial Guides

Temporary entry of goods

Please see EU Member State Country Commercial Guides

U.S. Business Travelers are encouraged to obtain a copy of the “Key Officers of Foreign Service Posts: Guide for Business Representatives”, available for sale by the Superintendent of Documents, U.S Government Printing Office, Washington, D.C. 20420; Tel (202) 512-1800, Fax (202) 512-2250. Business travelers to the European Union seeking appointments with officials in the U.S. Mission to the European Union in Brussels, Belgium should contact the Commercial Service in advance. The Commercial Service can be reached by telephone at (32-2) 508-2746, or by fax at (32-2) 513-1228.

X. APPENDICES

APPENDIX A
EUROPEAN UNION DATA

A. Country Data:

- Population:	376.7 million (2000 EST. - EU 15)
- Religions:	see member state country data
- Governments:	see member state country data
- Languages: (official)	English, French, German, Spanish, Italian, Danish, Swedish, Greek, Finnish, Portuguese, Dutch
- Workweek:	see member state country data

B. Economy:
(in billions of U.S. dollars unless otherwise specified)

	1997	1998	1999	2000E	2001E
GDP (a)	8213	8505	8417	N/A	N/A
GDP Per Capita (b)	21,960	22,692	22,403	N/A	N/A
GDP Growth	2.5	2.7	2.3	3.4	3.1
Unemployment (c)	10.6	9.9	9.2	8.5	7.9
Inflation (d)	1.7	1.3	1.3	1.8	1.7
Govt. Deficit (%GDP)	–2.4	-1.5	-0.6	-0.4	-0.3
Govt. Debt (%GDP)	71.0	69.0	67.6	65.1	62.6
Current Account Balance (%GDP)	1.4	0.9	0.2	0.1	0.3
Exchange Rates (e)	1.13	1.12	1.06	1.06	1.05

*Real pct change p.a. unless otherwise stated.

(a) In billions of USD converted at current prices and exchange rates
(b) In USD converted at current prices and exchange rates
(c) As a percentage of the civilian labor force
(d) Harmonized index of consumer prices, nominal change
(e) USD per ECU/Euro

Source: OECD 06/2000

C. Trade
(in billions of U.S. dollars unless otherwise specified)

	1996	1997	1998	1999
U.S.-EU imports (%	20.4	20.4	21.9	21.9

of total)				
U.S.-EU exports (% of total)	19.6	18.1	19.3	19.1
U.S. exports to the EU (fas)	127.5	140.8	149.5	151.6
U.S. imports from the EU (cif)	142.7	157.5	176.4	195.4

Source: OECD 06/2000

D. Investment
(in billions of U.S. dollars unless otherwise specified)

	1996	1997	1998	1999
Total EU direct investment in the U.S	334.7	390.6	481.7	N/A
U.S. direct investment in the EU	337.2	371.8	433.7	N/A

Source: Survey of Current Business, July 1999

APPENDIX B.
U.S. AND COUNTRY CONTACTS
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National Marine Fisheries Service
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For Information on activities of the Customs Cooperation Council (informally known as the World Customs Organization)

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Technical Service Center
106 South 15th Street
300 7th Street, SW
Omaha, NE 68102
Tel: (402) 221-7400
Fax: (402) 221-7438

For information and assistance on EU dairy standards and sanitary controls, please contact:

Dr. Richard McKee
Director, Dairy Division
Agricultural Marketing Service
U.S. Department of Agriculture
14th & Independence Ave., S.W., Rm 2968-S
Washington, D.C. 20090-5751

Tel: (202) 690-3410
Fax: (202) 720-2643

For additional information on export requirements for livestock species, poultry, pets and laboratory animal species, please contact:

Dr. Najam Faizi
Senior Staff Veterinarian
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Veterinary Services
Import/Export Animals Staff
Unit 39
4700 River Road
Riverdale, MD 20737-1228
Tel: (301) 734-8383
Fax: (301) 734-6402

For information on phytosanitary certificates please contact:

Dr. Bob Bokma
Director (Plant Health)
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
International Services
Operational Support
Unit 67
4700 River Road
Riverdale, MD 20737-1228
Tel: (301) 734-8892
Fax: (301) 734-8318

Information on the maximum pesticide residue levels set by the Commission and those under consideration may be obtained from:

Carolyn Wilson
Office of Food Safety and Technical Services
Foreign Agricultural Service
U.S. Department of Agriculture
14th and Independence Avenue S.W.
Washington, D.C. 20250
Tel: (202) 720-2239
Fax: (202) 690-0677

For additional information on marketing organic produce in the European Union, please contact:

Audrey Talley

Office of Food Safety and Technical Services
Foreign Agricultural Service
U.S. Department of Agriculture
14th and Independence Avenue S.W.
Washington, D.C. 20250
Tel: (202) 720-9408
Fax: (202) 690-0677

European Union

For information from the European Commission about the European Union, contact:

European Union
Delegation of the European Commission
2300 M Street, 3rd Floor, N.W.
Washington, D.C. 20037
Tel. (202) 862-9500
Fax: (202) 429-1766
Website: http://www.euunion.org

European Commission
Rue de la Loi 200 / Wetstraat 200
B-1049 Brussels, Belgium
Tel. (32-2) 299-1111 (switchboard)
Fax: (32-2) 295-0138 / 39 / 40
Websites: http://europa.eu.int/comm/index_en.htm
(European Commission)
http://europa.eu.int/en/comm/dg01/eu-us.htm
(EU-U.S.relations)

For information on topics related to doing business in the European Union, consult the following websites:

http://europa.eu.int/business	EU's One Stop Internet Shop for Business (EU funds, technical standards, intellectual property law, and free access to public procurement tender notices via the Tenders Electronic Daily (TED) database).
http://mkaccdb.eu.int	EU market access database (information on tariffs and other trade information)
http://europa.eu.int/celex	CELEX – Access to EU law

http://www.cordis.lu	CORDIS – Community Research and Development Information Service (EU research and innovation website)
http://europa.eu.int/comm/eurostat	European Commission Statistical Office (Eurostat)
http://eur-op.eu.int	EU Office of Official Publications
http://europa.eu.int/euro/	EU official website on the euro
http://www.ecb.int	European Central Bank, Frankfurt
http://www.eib.org	European Investment Bank, Luxemburg
http://www.ue.eu.int	Council of the European Union
http://www.ue.eu.int/en/presid	Presidency of the Council of the European Union
http://www.europarl.eu.int	European Parliament

Private Sector Associations & Fora

Contacts in the U.S.:

European-American Business Council
1333 H Street, N.W.
Washington, D.C. 20005
Tel: (1-202) 347-9292
Fax: (1-202) 628-5498

The European Institute
Suite 200
5225 Wisconsin Avenue, N.W.
Washington, D.C. 20015
Tel: (1-202) 895-1670
Fax: (1-202) 362-1088
Website: http://www.europeaninstitute.org

Ms. Lisa Schroeter
U.S. Director
Transatlantic Business Dialogue (TABD)
United Technologies Corporation (UTC)
1401 I Street, N.W., Suite 600

Washington, D.C. 20005
Tel. (202) 336-7485
Fax: (202) 336-7447
Website: http://www.tabd.com

Trans-Atlantic Small Business Initiative
http://www.tasbi-sme.com

Contacts in the EU:

Centre for European Policy Studies (CEPS)
1 Place du Congres
B-1000 Brussels, Belgium
Tel: (32-2) 229-3911
Fax: (32-2) 219-4151
Website: http://www.ceps.be

EU Committee
(of the American Chamber of Commerce in Belgium)
50 Avenue des Arts, Box 5
1000 Brussels, Belgium
Tel: (32-2) 513-6892
Fax: (32-2) 513-7928
Website: http://www.eucommittee.be

The European Policy Centre
42 Boulevard Charlemagne
B-1000 Brussels, Belgium
Tel: (32-2) 231-0340
Fax: (32-2) 231-0704
Website: http://www.TheEPC.be

The European Round Table of Industrialists (ERT)
113 Avenue Henri Jaspar
1060 Brussels, Belgium
Tel: (32-2) 534-3100
Fax: (32-2) 534-7348
Website: http://www.ert.be

Trans European Policy Studies Association (TEPSA)
11 Rue d'Egmont
B-1000 Brussels, Belgium
Tel: (32-2) 511-8100
Fax: (32-2) 511-6770

The Transatlantic Policy Network
Rue Froissart 115, 1rst floor
1040 Brussels, Belgium
Tel: (32-2) 230-6149
Fax: (32-2) 230-5896

Periodicals

Euroguide News
(Newsletter of the Guide to European Community Grants and Loans)
44 Melville Street
Edinburgh, Scotland
United Kingdom EH3 7HF
Tel: (44-131) 225-8451
Fax: (44-131) 220-1972
Website: http://www.eurofi.co.uk

Europe Daily Bulletin (Bulletin Quotidien Europe)
Agence Europe S.A.
(daily)
36 Rue de la Gare
B-1040 Brussels, Belgium
Tel: (32-2) 737-9494
Fax: (32-2) 736-3700

EUR-OP News
(quarterly overview of key EU policies)
Office for Official Publications of the European Communities
2 Rue Mercier
2985 Luxembourg
Tel: (352) 499-281
Fax: (352) 495-719

European Report
(biweekly update on European affairs)
Europe Information Service
4 Avenue R. Gobert
1180 Brussels, Belgium
Tel: (32-2) 737-7709
Fax: (32-2) 732-6757
Website: http://www.eis.be

European Voice
(weekly newspaper on EU developments)
17-19 Rue Montoyer

1000 Brussels, Belgium
Tel: (32-2) 540-9075
Fax: (32-2) 540-9070
Website: http://www.european-voice.com

The European
(weekly newspaper on EU developments)
27 Rue le Correge
1040 Brussels, Belgium
Tel: (32-2) 732-5250
Fax: (32-2) 735-9668

The Parliament Magazine
(semimonthly on the activities of the European Parliament)
Treves Centre
45 Rue de Treves
1040 Brussels, Belgium
Tel: (32-2) 238-7810
Fax: (32-2) 238-7808

EU-related websites

EurActiv: http://www.euractiv.com